

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-560

Filed 19 December 2023

Mecklenburg County, No. 21CVS3868

KAY B. RIFFLE, JAMES B. BROOME, MARY B. PRIM, and MARIE B. TAVENNER,
Plaintiffs,

v.

ESTATE OF LARRY MORGAN, JOYCE B. HARDISTER, JOHN DOE 1, JOHN DOE
2, JOHN DOE 3, JANE DOE 1, JANE DOE 2, and JANE DOE 3, Defendants.

Appeal by petitioner-appellant from orders entered 1 March 2022 and 16
November 2022 by Judge Karen Eady Williams in Mecklenburg County Superior
Court. Heard in the Court of Appeals 15 November 2023.

*Cranford Buckley Schultze Tomchin Allen & Buie, by R. Gregory Tomchin, for
petitioner-appellant Alliance Finance, Inc.*

*Weaver & Budd, Attorneys at Law, PLLC, by Laura H. Budd, for plaintiffs-
appellees.*

GORE, Judge.

Petitioner-appellant, Alliance Finance, Inc. (“petitioner”), appeals the Rule 70
Consent Order and the Order Denying Motion to Vacate and Set Aside Consent
Order. Upon review of the record and the briefs, we dismiss this appeal for lack of
jurisdiction.

I.

The orders from which petitioner seeks appeal are based upon two years of litigation surrounding property located in Mecklenburg County. The property was originally bought by Larry Morgan and Phil W. Broome, in 1980, as tenants in common with each taking a one-half undivided interest in the property. Around 1984, Larry Morgan moved away and ceased communications with Phil Broome about the property, allegedly abandoning his interest in the property. Broome continued to financially maintain the property, and to pay taxes, insurance, and all costs related to ownership of the property. According to plaintiffs, from 1984 until Broome's death in 2019, he had no communication with Morgan and no longer acknowledged Morgan's interest in the property.

Plaintiffs inherited Broome's estate and sought to locate Morgan's heirs, believing him deceased, but were unsuccessful. Plaintiffs filed a lawsuit on 2 October 2020 claiming ownership in Morgan's remaining one-half interest through the doctrines of constructive ouster and adverse possession. Petitioner reached out to plaintiffs around the time of the filing of the complaint to see if plaintiffs would sell their interest in the property to petitioner. Petitioner told plaintiffs it was negotiating to purchase Morgan's interest in the property. Plaintiffs sent a letter requesting petitioner provide the names and contact information of any alleged heirs of Morgan, but petitioner ignored their request. Plaintiffs subpoenaed the information from petitioner during the lawsuit, but petitioner filed a motion to quash

the subpoena and refused to provide any information citing the requirement was “unreasonable” because it required “disclosure of privileged and other protected matters.” Plaintiffs proceeded with the lawsuit and sought default judgment of the only known heir to Morgan. Upon the entry of default, on 23 February 2021, petitioner filed a motion to intervene in the lawsuit, and on 22 June 2021, an amended motion to intervene. Default judgment was granted on 28 April 2021, between the filings of petitioner’s motions to intervene. The trial court denied petitioner’s amended motion to intervene and within the order it barred petitioner from intervening in the case pursuant to judicial estoppel, equitable estoppel, and unclean hands. Petitioner did not seek appeal of this order.

On 20 January 2022, plaintiffs filed a Motion for Order to Enforce Rule 70 seeking to divest all parties claiming an interest in the Property, including petitioners. On 1 March 2022, the trial court entered a Consent Order Granting Plaintiffs Rule 70 Motion. On 18 January 2022, petitioners filed a separate lawsuit seeking declaratory judgment to determine ownership of the property. Plaintiffs filed a motion to dismiss pursuant to res judicata and collateral estoppel. The trial judge took the issue under advisement and discussed the matter with the trial judge who had entered the Rule 70 Consent Order. The trial judge issued a *sua sponte* Motion to Vacate and Set Aside the Rule 70 Order that was heard before the court on 30 September 2022. On 16 November 2022, the trial court entered an order denying the Motion to Vacate and Set Aside the Rule 70 Consent Order. Petitioner filed a notice

of appeal on 12 December 2022 for review of the Rule 70 Consent Order and the Order Denying Motion to Vacate and Set Aside Consent Order.

II.

Petitioner concedes it “was not a party to the lawsuit from which this Appeal is taken.” Further, the record includes petitioner’s previous motion to intervene in the lawsuit and the trial court’s order denying petitioner’s motion to intervene. A party must first establish this Court has jurisdiction to reach the merits of their appeal. *See Bailey v. State*, 353 N.C. 142, 155–56 (2000). “Rule 3 specifically designates that ‘any *party* entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal.’” *Id.* at 156. As previously stated by our Supreme Court, “[a] careful reading of Rule 3 reveals that its various subsections afford no avenue of appeal to . . . persons who are nonparties to a civil action.” *Id.*, *see also Berens v. Berens*, 247 N.C. App. 12, 16–17 (2016) (applying *Bailey* and denying the petitioner’s appeal as a nonparty, despite her filing of multiple pleadings and her counsel’s representation during the hearing). Accordingly, because petitioner is not a party and was never a party to this action, the only proper action for this Court is to dismiss.

Petitioner requests we invoke Rule 2 to suspend the Appellate Rules and “prevent manifest injustice,” because the Rule 70 Consent Order and the denial of the *sua sponte* Motion to Reconsider and Vacate the Rule 70 Consent Order had the effect of denying petitioner “its due process rights in the property.” N.C.R. App. P. 2. “The

invocation of Rule 2 is discretionary and should only be done so cautiously and in exceptional circumstances.” *Cnty. of Mecklenburg v. Ryan*, 281 N.C. App. 646, 659, *rev. denied*, 891 S.E.2d 287 (N.C. 2023) (Mem.) (internal quotation marks and citation omitted). Further, “in the absence of jurisdiction, [we] lack authority to consider whether the circumstances . . . justify application of Rule 2.” *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 198 (2008). Because petitioner is not and was never a party to the action, we dismiss the appeal for lack of jurisdiction.

III.

For the foregoing reasons, we dismiss petitioner’s appeal.

DISMISSED.

Judges CARPENTER and FLOOD concur.

Report per Rule 30(e).