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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-626

Filed 5 November 2024

Nash County, No. 22CVS269

YAHIR BONET, Plaintiff,

v.

SGT. M. COSTA, in his individual and official capacities as a Nash County Sheriff's Deputy, and Keith Stone, in his Official capacity as Sheriff of Nash County, North Carolina and NASH COUNTY, NORTH CAROLINA, Defendants.¹

Appeal by defendants from order purportedly entered 12 December 2022 by Judge Eula E. Reid in Superior Court, Nash County. Heard in the Court of Appeals 19 March 2024.

William C. Pruden and Chad E. Axford for plaintiff-appellee.

Womble Bond Dickinson (US) LLP, by Brian F. Castro, for defendants-appellants.

STROUD, Judge.

Defendants appeal the order denying their motion to dismiss. As our record on appeal does not contain a file-stamped order, we must dismiss the appeal.

¹ Defendant Loor is not listed in the caption of the order on appeal but he is also a party to this appeal.

I. Background

On 10 February 2022, Plaintiff was pulled over by deputies with the Nash County Sherriff's Office for traffic offenses. The deputies searched Plaintiff's vehicle with his consent and located \$66,600.00 in cash. The deputies contacted agents with the United States Drug Enforcement Administration ("DEA") who interviewed Plaintiff about the large sum of cash. After the interview, the DEA adopted a forfeiture on the money and seized it that same day as they were "currently performing their own active investigation" of Plaintiff.

On 21 February 2022, Plaintiff filed a complaint in the Superior Court in Nash County "to recover actual compensatory, and punitive damages as a result of gross negligence, negligence, the Nash County Sheriff's Office's willful failure to perform their duties" and "for violating North Carolina conversion common law." The complaint alleged claims only against the sheriff of Nash County and two deputies present during the events on 10 February 2022; Plaintiff did not include the DEA or any federal authorities in the complaint.

On 8 April 2022, Defendant Stone filed a motion to dismiss "[p]ursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure" and on 21 April 2022, the other two Defendants filed a motion to dismiss "[p]ursuant to Rules 12(b)(1), 12(b)(4), 12(b)(5), and 12(b)(6) of the North Carolina Rules of Civil Procedure." All Defendants' arguments essentially claimed since the federal authorities adopted the forfeiture, Plaintiff did not have a proper cause of action against Defendants. On or

about 12 December 2022, the trial court signed an order denying the motions to dismiss, stating “[u]pon review of the record proper, arguments of counsel, case law presented by the parties, the court hereby Denies the Motion to Dismiss.” Defendants filed notice of appeal on 17 January 2023.

II. Appellate Jurisdiction

As the record on appeal does not include a file-stamped copy of the order at issue in this appeal, we must consider whether this Court has jurisdiction over the appeal.

A. Lack of File-Stamped Order

While Plaintiff did not raise this issue in his brief to this Court, “It is well-established that the issue of a court’s jurisdiction over a matter may be raised at any time, even for the first time on appeal or by a court *sua sponte*.” *State v. Webber*, 190 N.C. App. 649, 650, 660 S.E.2d 621, 622 (2008) (citation omitted). Rule 58 of the North Carolina Rules of Civil Procedure states “a judgment is entered when it is reduced to writing, signed by the judge, and *filed with the clerk of court*[.]” N.C. Gen. Stat. § 1A-1, Rule 58 (2023) (emphasis added). This Court has decided “Rule 58 applies to orders, as well as judgments[.]” *In re Thompson*, 232 N.C. App. 224, 227, 754 S.E.2d 168, 171 (2014) (citation omitted). Further, “a party cannot appeal an order until entry occurs.” *Id.*

Here, the order in the record on appeal is typed and signed by the judge but there is no indication it was “filed with the clerk of court.” N.C. Gen. Stat. § 1A-1,

Rule 58. The order has no visible file stamp, and without a file stamp, we are unable to say this order has been “filed with the clerk of court.” *Id.* We addressed the effect of an appealed order lacking a file stamp in *McKinney v. Duncan*:

Defendant has attempted to appeal from orders that were signed by the trial court on 12 December 2016. These orders do not bear a file stamp or other indication that they were ever filed with the clerk of court. As a result, the record fails to establish that the orders were entered:

Clerk Hinshaw orally rendered her decision on 26 April 2007 in open court. Thereafter, she reduced the order to writing and dated it. However, nothing in the record indicates that the order was filed with the clerk of court.

The order is devoid of any stamp-file or other marking necessary to indicate a filing date, and therefore it was not entered. *See Huebner v. Triangle Research Collaborative*, 193 N.C. App. 420, 422, 667 S.E.2d 309, 310 (2008) (asserting that a filing date is to be determined by the date indicated on the file-stamp); *see also Watson*, 211 N.C. App. at 373, 712 S.E.2d at 157 (standing for the proposition that a signed and dated order is insufficient to be considered filed).

In re Thompson, 232 N.C. App. 224, 228, 754 S.E.2d 168, 171 (2014). A properly entered order is essential to vest this Court with subject matter jurisdiction over an appeal:

Entry of judgment by the trial court is the event which vests jurisdiction in this Court, and the judgment is not complete for the purpose of appeal until its entry. Since entry of judgment is jurisdictional, this Court has no authority to hear an appeal where there has been no entry of judgment[.] We must dismiss this appeal since we lack jurisdiction. *See Mason v. Moore County Bd. of*

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Opinion of the Court

Comm’rs, 229 N.C. 626, 629, 51 S.E.2d 6, 8 (1948) (“If the record fails to disclose the necessary jurisdictional facts we have no authority to do more than dismiss the appeal.”)

In re Estate of Walker, 113 N.C. App. 419, 420-21, 438 S.E.2d 426, 427 (1994) (citing *Searles v. Searles*, 100 N.C. App. 723, 725-26, 398 S.E.2d 55, 57 (1990)). We conclude that the orders from which defendant has attempted to appeal were never entered, and we have no subject matter jurisdiction to review their contents. Accordingly, defendant’s appeal is [dismissed].

256 N.C. App. 717, 720-21, 808 S.E.2d 509, 512 (2017) (ellipses, brackets, and footnotes omitted).

Our Supreme Court has further addressed the effect of nonjurisdictional versus jurisdictional requirements, stating “[a] jurisdictional default . . . precludes the appellate court from acting in any manner other than to dismiss the appeal.” *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co. Inc.*, 362 N.C. 191, 197, 657 S.E.2d 361, 365 (2008). And while Rule 2 of our Rules of Appellate Procedure allows this Court to suspend the appellate rules “[t]o prevent manifest injustice to a party, or to expedite decision in the public interest[,]” see N.C. R. App. P. 2, “in the absence of jurisdiction, the appellate courts lack authority to consider whether the circumstances of a purported appeal justify application of Rule 2.” *Dogwood*, 362 N.C. at 198, 657 S.E.2d at 365.

Much like the order at issue in *McKinney*, the order here was signed and dated by the trial court, but it was not file-stamped with the clerk of court. See *McKinney*,

256 N.C. App. at 720, 808 S.E.2d at 512. While Plaintiff has not made any arguments to this Court regarding the unfiled order, and the other motions, affidavits, and notice of appeal are properly file-stamped, we are constrained by our Supreme Court's ruling in *Dogwood* and must dismiss the appeal as the lack of a file-stamped order prevents this Court from having jurisdiction. *See Dogwood*, 362 N.C. at 197, 657 S.E.2d at 365.

III. Conclusion

As the record on appeal does not include a file-stamped order that is subject to appeal, we must dismiss the appeal.

DISMISSED.

Judges MURPHY and FLOOD concur.

Report per Rule 30(e).