

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-123

Filed 17 December 2024

Forsyth County, No. 23 CVD 1164

MIDLAND CREDIT MANAGEMENT, INC., Plaintiff,

v.

DERRICK MITCHELL, Defendant.

Appeal by Defendant from order entered 2 November 2023 by Judge Frederick B. Adams II in Forsyth County District Court. Heard in the Court of Appeals 13 August 2024.

Smith Debnam Narron Drake Saintsing & Myers, L.L.P., by Rachel E. Rogers, for Plaintiff-Appellee.

Derrick Mitchell, Defendant-Appellant, Pro Se.

CARPENTER, Judge.

Derrick Mitchell (“Defendant”) appeals *pro se* from an order granting a motion for summary judgment in favor of Midland Credit Management, Inc. (“Plaintiff”). On appeal, Defendant argues that the trial court erred by: (1) failing to dispose of Defendant’s motion to dismiss; (2) granting Plaintiff’s motion for summary judgment; (3) granting Plaintiff’s motion for an extension of time; (4) failing to dispose of

Defendant's motion to strike Plaintiff's corporate verification; and (5) granting Plaintiff's motion to strike Defendant's amended counterclaim. After careful review, we dismiss Defendant's appeal due to substantial violations of the North Carolina Rules of Appellate Procedure. Such violations impede our ability to conduct a meaningful review and frustrate the adversarial process.

I. Factual & Procedural Background

This case pertains to the credit card account Defendant held with Comenity Capital Bank ("CCB"). On 20 July 2021, Defendant's credit card account was used to make a \$13,500.00 purchase. Defendant failed to make any payment towards his account balance.

According to the credit card account's terms and conditions, each account holder enters into a credit card agreement with CCB upon their first use of the card. Under the credit card agreement, each credit card account holder is responsible for their account balance. On 28 February 2022, CCB charged-off¹ Defendant's credit card account with an outstanding balance of \$13,790.19.²

On 29 March 2022, CCB mailed Defendant a letter stating that his charged-off credit card account was sold to Plaintiff. On 10 April 2022, Plaintiff informed

¹ A debt charge off occurs when a creditor ceases collection efforts on an unpaid debt and writes off the unpaid debt as a loss. *See Charge Off*, BLACK'S LAW DICTIONARY (12th ed. 2024).

² Defendant's outstanding balance includes the \$13,500.00 purchase, interest, and fees.

Defendant that they would be collecting on his unpaid credit card account and that he had until 25 May 2022 to dispute or stop collection.

On 2 and 29 June 2022, Plaintiff informed Defendant that it was “considering forwarding this account to an attorney . . . for possible litigation” and requested Defendant pay his outstanding balance to prevent litigation. On 3 August 2022, Plaintiff sent Defendant a pre-legal notification, again requesting payment of his outstanding balance to prevent litigation and providing information about available payment plans. On 7 September 2022, Plaintiff sent Defendant a final notice to pay his outstanding balance before beginning the attorney review process on 7 October 2022. On 6 March 2023, Plaintiff sued Defendant for breach of credit card agreement in Forsyth County District Court.

On 26 May 2023, Defendant filed a motion to dismiss. On 29 September 2023, Plaintiff filed a motion for summary judgment, notice of hearing, and a corporate verification statement. On 24 October 2023, Defendant filed counterclaims for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, and the North Carolina Prohibited Practices by Collection Agencies Engaged in the Collection of Debts from Consumers, N.C. Gen. Stat. § 58-70-90, *et seq*, and a motion to strike Plaintiff’s corporate verification. On 25 October 2023, Defendant filed an amended counterclaim that included an additional alleged violation of section 1666 of the federal Fair Debt Collection Practices Act. On 31 October 2023, Plaintiff filed a motion to strike Defendant’s amended counterclaim.

On 2 November 2023, the trial court entered an order granting Plaintiff's motion for summary judgment and requiring Defendant to pay damages in the amount of \$13,790.19 plus interest.³ On 17 November 2023, Defendant filed notice of appeal to this Court. On 8 February 2024, the trial court granted Plaintiff's motion to strike Defendant's amended counterclaim.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 7A-27(b) (2023).⁴ Nevertheless, we dismiss Defendant's appeal for substantial violations of the North Carolina Rules of Appellate Procedure.

As a *pro se* litigant, Defendant retains the responsibility to follow court rules and procedure. *Goins v. Puleo*, 350 N.C. 277, 281, 512 S.E.2d 748, 751 (1999); *Guerra v. Harbor Freight Tools*, 287 N.C. App. 634, 639–40, 884 S.E.2d 74, 78 (2023) (“Although we recognize the difficult challenges a *pro se* litigant and appellant encounters when navigating the rules and procedures of our legal system, our [rules] equally ‘apply to everyone—whether acting *pro se* or being represented by all of the five largest firms in the state.’” (citing *Bledsoe v. Cnty. of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999))).

³ Here, the interest accrues by the statutory post judgment rate until the balance and court costs are paid in full.

⁴ The summary judgment order was entered on 2 November 2023 and became the final judgment in this matter at trial upon the 8 February 2024 order striking Defendant's amended counterclaim. *Cf. Tarrant v. Freeway Foods of Greensboro, Inc.*, 163 N.C. App. 504, 507–08, 593 S.E.2d 808, 811 (2004) (noting “the rationale behind dismissing interlocutory appeals, the prevention of fragmentary and unnecessary appeals, does not apply in this case”).

“[T]he Rules of Appellate Procedure are ‘mandatory and not directory.’” *State v. Bursell*, 372 N.C. 196, 199, 827 S.E.2d 302, 304 (2019) (quoting *State v. Hart*, 361 N.C. 309, 311, 644 S.E.2d 201, 202 (2007)). They “are necessary in order to enable the courts to properly discharge their duty of resolving disputes.” *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 193, 657 S.E.2d 361, 362 (2008) (citation and quotation marks omitted). “[F]ailure of the parties to comply with the rules, and failure of the appellate courts to demand compliance therewith, may impede the administration of justice.” *Id.* at 193, 657 S.E.2d at 362. Parties who do not follow the rules may “forfeit their right to review on the merits,” and as a result, we may dismiss their appeal. *Id.* at 194, 657 S.E.2d at 363; N.C. R. App. P. 25(b), 34(b)(1).

Granted, “a party’s failure to comply with nonjurisdictional rule requirements normally should not lead to dismissal of the appeal.” *Dogwood*, 362 N.C. at 198, 657 S.E.2d at 365. Instead, “only in the most egregious instances of nonjurisdictional default will dismissal of the appeal be appropriate.” *Id.* at 200, 657 S.E.2d at 366.

When deciding whether to dismiss an appeal based on nonjurisdictional violations, this Court conducts a case-by-case inquiry in which we consider: (1) whether the violations impair our review of the case; (2) whether the violations “frustrate” the adversarial process; and (3) the number of violations. *See N.C. ex rel. Expert Discovery, LLC v. AT&T Corp.*, 287 N.C. App. 75, 84, 882 S.E.2d 660, 668–69 (2022) (citing *Dogwood*, 362 N.C. at 199–200, 657 S.E.2d at 366–67).

Rule 28 is a nonjurisdictional rule governing the function and content of appellate briefs. *See Dogwood*, 362 N.C. at 198, 657 S.E.2d at 365. Rule 28 requires that appellate briefs “define clearly the issues presented to the reviewing court and [] present the arguments and authorities upon which the parties rely in support of their respective positions thereon.” N.C. R. App. P. 28(a). When “no reason or argument is stated” in support of the issues presented, the issues are considered abandoned. N.C. R. App. P. 28(b)(6); *see Fairfield v. WakeMed*, 261 N.C. App. 569, 575, 821 S.E.2d 277, 281 (2018) (finding an argument abandoned for failure to cite any supporting legal authority). As shown below, Defendant did not meet the Rule 28 requirements for any issue asserted in his brief.

A. Motions to Dismiss and Strike

Defendant failed to include standards of review, arguments, or supporting legal authority for the issues related to his motion to dismiss, his motion to strike Plaintiff’s corporate verification, Plaintiff’s motion to strike his amended counterclaim, and his motion to strike Plaintiff’s motion to strike. Instead, Defendant only provided conclusory statements alleging the trial court: “fail[ed] to hear or otherwise dispose of the defendant’s motion to dismiss claim;” “fail[ed] to hear or otherwise dispose of defendant’s motion to strike plaintiff’s corporate verification claim;” “erred in granting the plaintiff’s Motion to strike defendant’s amended counter claim;” and “fail[ed] to hear or otherwise dispose of the defendant’s motion to strike plaintiff’s motion to strike defendant’s amended counter claim.”

Because no standards of review, arguments, or supporting legal authority were presented, Defendant's brief is wholly deficient under Rule 28. Defendant's failures substantially "impair[] [our] task to review and frustrate[] the adversarial process as any review on the merits would require this Court to construct and decide arguments that [Defendant] has not adequately presented and to which [Plaintiff has] not had an opportunity to respond." *See K2HN Constr. NC, LLC v. Five D Contrs., Inc.*, 267 N.C. App. 207, 215, 832 S.E.2d 559, 565 (quotations and citations omitted). Therefore, Defendant's issues are abandoned.

B. Summary Judgment

On the issue of summary judgment, Defendant only provided a standard of review. Defendant made no argument as to how the trial court erred by granting Plaintiff's motion for summary judgment, nor did he include any supporting legal authority. Again, this is insufficient to meet the requirements of Rule 28 and gives this Court no opportunity to conduct a meaningful review. *See K2HN Construction NC, LLC*, 267 N.C. App. at 213, 832 S.E.2d at 564. Thus, Defendant abandoned the summary judgment issue.

C. Motion for Extension of Time

Defendant presented no standard of review on the issue of Plaintiff's motion for extension of time. While Defendant included a factual argument regarding service of process and cited legal authority supporting that a trial court is "without jurisdiction to render judgment" absent effective service of process, the argument and

cited authority fail to establish or otherwise demonstrate how the trial court erred. “It is not the role of the appellate courts, however, to create an appeal for an appellant.” *Viar v. N.C. Dep’t of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (2005). It follows that Defendant did not satisfy Rule 28, consequently leaving this issue abandoned. *See K2HN Construction NC, LLC*, 267 N.C. App. at 213, 832 S.E.2d at 564.

D. Constitutional Violations

Defendant appears to raise constitutional claims as to the issues of his motion to dismiss, Plaintiff’s motion for summary judgment and Defendant’s brief in opposition to the motion for summary judgment, Plaintiff’s motion for an extension of time, Defendant’s motion to strike Plaintiff’s corporate verification claim, and Defendant’s motion to strike Plaintiff’s motion to strike Defendant’s amended counterclaim. Other than vaguely referencing the North Carolina Constitution and the United States Constitution, Defendant made no effort to explain how the trial court violated his constitutional rights with respect to each issue. Again, we cannot create Defendant’s constitutional arguments for him; therefore, he has abandoned such claims on appeal. *See K2HN Construction NC, LLC*, 267 N.C. App. at 213, 832 S.E.2d at 564.

E. Dismissal

Overall, for each issue presented, Defendant’s Rule 28 violations are substantial because they impair our ability to review each issue “as any review on

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the merits would require this Court to construct and decide arguments that [Defendant] has not adequately presented and to which [Plaintiff has] not had an opportunity to respond.” *See K2HN Constr. NC, LLC*, 267 N.C. App. at 215, 832 S.E.2d at 565 (citations and quotation marks omitted). Accordingly, to uniformly enforce our rules and follow precedent, Defendant’s appeal is dismissed. *See Dogwood*, 362 N.C. at 199–200, 657 S.E.2d at 366.

III. Conclusion

For the foregoing reasons, we dismiss Defendant’s appeal for substantial nonjurisdictional violations of our Rules of Appellate Procedure.

DISMISSED.

Judges ZACHARY and WOOD concur.

Report per Rule 30(e).