An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA25-674

Filed 4 November 2026

Lenoir County, No. 21CVD000625-530

DONYELLE SIMMONS, Plaintiff,

v.

VICTOR SPELLER, Defendant.

Appeal by Plaintiff from order entered 26 September 2024 by Judge W. Curtis Stackhouse in Lenoir County District Court. Heard in the Court of Appeals 13 January 2026.

Donyelle Simmons, pro se, Plaintiff-Appellant.

White & Allen, P.A., by David J. Fillippeli, Jr. and Savannah H. Moore, for Defendant-Appellee.

CARPENTER, Judge.

Donyelle Simmons ("Mother") appeals after the district court declined to award her joint physical custody of her minor child, whom she shares with Victor Speller ("Father"). On appeal, Mother argues: (1) the district court abused its discretion when it declined to award her joint physical custody in a 2024 order; (2) the district court abused its discretion when it granted Father primary custody in a 2022 order;

and (3) Mother's counsel was biased and ineffective during the 2024 hearing. After careful review, we dismiss her appeal.

I. Factual & Procedural Background

Mother and Father are the parents of a minor child. In June 2023, Mother filed a motion to modify child custody. The trial court heard Mother's motion and subsequently entered the 2024 order ("Modification Order"). The record tends to show the following.

In September 2022, the trial court entered a permanent custody order ("Custody Order"), awarding Father primary physical custody and granting Mother visitation every other weekend. Mother did not appeal that order.

In June 2023, Mother filed a motion to modify custody, alleging that circumstances had substantially changed since entry of the Custody Order and seeking joint physical custody. In support of her motion, Mother asserted that her personal circumstances had improved, including her housing stability, employment situation, and availability to care for the child. Mother also raised concerns related to the child's schooling, transportation, and well-being while in Father's care.

On 17 April 2024, the trial court heard Mother's motion.[1] In the Modification Order, the trial court agreed that Mother had demonstrated a substantial change in circumstances. The trial court made findings that Mother's housing and employment

[1] Mother did not include a transcript of the hearing in the record on appeal.

had stabilized; both parties were fit and proper to have custody rights; Father continued to have stable housing and employment; and the child was performing well in school. The trial court expanded Mother's visitation, with Mother receiving four additional overnight visits each month. On 17 October 2024, Mother filed timely notice of appeal from the Modification Order.

II. Jurisdiction

At the outset, we note that Mother's brief contains numerous violations of the North Carolina Rules of Appellate Procedure. In her brief, Mother did not include a statement of grounds for appellate review. Additionally, she did not appeal from the Custody Order, which she now challenges. Mother failed to provide an argument containing the applicable standards of review and authorities upon which she relies. She also failed to include information necessary for our review, namely a transcript of the modification hearing.

"It is not the role of the appellate courts . . . 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) (per curiam). "An appellant's brief shall contain . . . .[a] statement of the grounds for appellate review. Such statement shall include citation of the statute or statutes permitting appellate review." N.C. R. App. P. 28(b)(4) (2025). Appellants must also include in their brief:

> [a]n argument, to contain the contentions of the appellant with respect to each issue presented. Issues not presented in a party's brief, or in support of which no reason or

> argument is stated, will be taken as abandoned. The argument shall contain a concise statement of the applicable standard(s) of review for each issue[.] The body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies. Evidence or other proceedings material to the issue may be narrated or quoted in the body of the argument, with appropriate reference to the record on appeal, the transcript of proceedings, or exhibits.

N.C. R. App. P. 28(b)(6). "[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) (internal quotation marks and citation omitted), as a " 'failure 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 198–99, 827 S.E.2d at 304 (quoting *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 193, 657 S.E.2d 361, 362 (2008)).

Yet, noncompliance with nonjurisdictional rules "should not lead to dismissal of the appeal" unless the violations "rise to the level of a 'substantial failure' or 'gross violation.' " *Dogwood Dev. & Mgmt. Co.*, 362 N.C. at 198–99, 657 S.E.2d at 365–66. Noncompliance with the appellate rules rises to the level of a substantial failure or gross violation when the violation(s) impair our review and when review on the merits would "frustrate the adversarial process." *Id.* at 200, 657 S.E.2d at 366–67.

Thus, "[a]s a natural corollary, parties who default under the rules ordinarily forfeit their right to review on the merits." *Id.* at 194, 657 S.E.2d at 363 (citations

omitted). "[T]hese rules apply to everyone—whether acting *pro se* or being represented by all of the five largest firms in the state." *Bledsoe v. Cnty. of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d. 316, 317 (1999) (per curiam).

Here, Mother's violations of our Rules of Appellate Procedure preclude our review. *See Dogwood Dev. & Mgmt. Co.*, 362 N.C. at 197–98, 657 S.E.2d at 365–66. First, Mother purports to challenge the Custody Order, yet there is no indication in the record on appeal that she filed notice of appeal from that order. *See* N.C. R. App. P. 3(c)(1) (2025) ("In civil actions . . . a party must file and serve notice of appeal within thirty days after entry of judgment . . . ."); *see also Dogwood Dev. & Mgmt. Co.*, 362 N.C. at 197, 657 S.E.2d at 365 (" 'The provisions of Rule 3 are jurisdictional, and failure to follow the rule's prerequisites mandates dismissal of an appeal.' "). Accordingly, we must dismiss Mother's challenges to the Custody Order. *See id.* at 197, 657 S.E.2d at 365.

Second, Mother has abandoned her arguments related to the Modification Order, including her allegations of attorney bias and ineffectiveness. Mother's brief cites no standard of review or legal authority related to her arguments. *See* N.C. R. App. P. 28(b)(6). Moreover, Mother did not include a transcript of the modification hearing. *See* N.C. R. App. P. 9(a)(1)(e) (2025) (The record on appeal shall contain information "necessary for an understanding of all issues presented on appeal."); *see also In re A.R.H.B.*, 186 N.C. App. 211, 219, 651 S.E.2d 247, 253 (2007) (" 'The longstanding rule is that there is a presumption in favor of regularity and correctness

in proceedings in the trial court, with the burden on the appellant to show error.' "). Because Mother provided no authority to support her arguments or a transcript to facilitate our review, she has abandoned those arguments. *See Dogwood Dev. & Mgmt. Co.*, 362 N.C. at 194, 657 S.E.2d at 363.

V. Conclusion

Mother's gross violations of our Rules of Appellate Procedure impair our review, mandating dismissal of her appeal. *See Dogwood Dev. & Mgmt. Co.*, 362 N.C. at 200, 657 S.E.2d at 366–67.

DISMISSED.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).