An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA26-180

Filed 4 November 2026

Haywood County, No. 20CVD000503-430

TROY STEVEN MESSER, Plaintiff,

v.

TAMMY L. SUTTON, Defendant.

Appeal by defendant from orders entered 14 May 2025 and 24 July 2025 by Judge William J. Jones in Haywood County District Court. Heard in the Court of Appeals 15 October 2026.

Frank G. Queen, PLLC, by Frank G. Queen, for plaintiff-appellee.

McLean Law Firm, P.A., by Russell L. McLean, III, for defendant-appellant.

ZACHARY, Judge.

Defendant Tammy L. Sutton appeals from the trial court's order quieting title to two tracts of land in favor of Plaintiff Troy Steven Messer and the trial court's order denying Defendant's Rule 60(b) motion. After careful review, we dismiss Defendant's appeal from the order quieting title and affirm the trial court's order denying Defendant's Rule 60(b) motion.

I. Background

On 6 August 2023, Plaintiff acquired 23.04 acres of land in Haywood County, North Carolina. Over time, Plaintiff sold a number of parcels from the 23.04-acre tract.

On 14 February 2019, a third party deeded Defendant a parcel of land that was once a part of Plaintiff's original 23.04-acre tract. Defendant's deed included a description of three tracts of land, two of which Plaintiff claimed to own. Plaintiff complained that Defendant's deed "constitute[d] a claimed encumbrance to the title of [Plaintiff] and impair[ed] the marketability of his land."

Plaintiff "repeatedly requested that [Defendant] release her claim to [the two tracts] by quitclaim" deed conveying the tracts to Plaintiff, which Defendant declined to do. On 1 June 2020, Plaintiff filed an action to quiet title to those two tracts.

On 6 May 2025, this matter came on for hearing in Haywood County District Court. The trial court entered an order on 14 May 2025 decreeing that "Plaintiff is deemed the owner, free of any claims of . . . Defendant" and ordering Defendant to execute a non-warranty deed conveying the contested tracts to Plaintiff to remove the cloud on Plaintiff's title.

On 30 May 2025, Defendant filed a Motion for Relief from Judgment pursuant to Rule 60(b)(1) and (6). After hearing the arguments of counsel, the trial court denied Defendant's motion by order entered on 24 July 2025, and with which Defendant was served on 1 August 2025.

On 28 August 2025, Defendant filed written notice of appeal from the trial court's order quieting title in favor of Plaintiff and the order denying her Rule 60(b) motion.

II. Discussion

On appeal, Defendant argues that (1) "the trial court committed revers[i]ble error by quieting title" in favor of Plaintiff, and (2) "the Rule 60 motion should have been granted in favor of [Defendant]."

A. Order to Quiet Title

While neither party has addressed the issue on appeal, this Court "has the power to inquire into [subject-matter] jurisdiction in a case before it at any time, even sua sponte." *Lee v. Winget Rd., LLC*, 204 N.C. App. 96, 98, 693 S.E.2d 684, 687 (2010) (italics omitted).

Rule 3 of the North Carolina Rules of Appellate Procedure governs the timing for taking appeal in a civil action. Notice of appeal must be filed and served:

> (1) within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three day period prescribed by Rule 58 of the Rules of Civil Procedure; or
>
> (2) within thirty days after service upon the party of a copy of the judgment if service was not made within that three-day period . . . .

N.C.R. App. P. Rule 3(c). "The provisions of Rule 3 are jurisdictional, and failure to follow the requirements thereof requires dismissal of an appeal." *Wallis v. Cambron*,

194 N.C. App. 190, 193, 670 S.E.2d 239, 241 (2008). Moreover, "[m]otions entered pursuant to Rule 60 do not toll the time for filing a notice of appeal." *Id.*

In the instant case, on 28 August 2025, Defendant filed written notice of appeal from the trial court's 14 May 2025 order quieting title to the property in favor of Plaintiff and from the 24 July 2025 order denying her Rule 60(b) motion.

While the record is unclear as to when Defendant was served with the trial court's order quieting title, it is clear that she possessed the order when she filed her Rule 60(b) motion, which references the order. *See id.* Assuming, *arguendo*, that Defendant was not served with the trial court's order until the day she filed her Rule 60(b) motion on 30 May 2025, Defendant's notice of appeal—filed on 28 August 2025—was well outside the 30-day window prescribed by Rule 3.

Because the provisions of Rule 3 are jurisdictional, Defendant's appeal from the order quieting title must be dismissed. *Id.*

B. Denial of Rule 60 Motion

Defendant maintains that the trial court "committed reversible error by not granting [her] Rule 60 motion." We disagree.

1. Standard of Review

"[A] motion for relief under Rule 60(b) is addressed to the sound discretion of the trial court and appellate review is limited to determining whether the court abused its discretion." *Sink v. Easter*, 288 N.C. 183, 198, 217 S.E.2d 532, 541 (1975). "Abuse of discretion is shown when the court's decision is manifestly unsupported by

reason or is so arbitrary that it could not have been the result of a reasoned decision." *Brown v. Foremost Affiliated Ins. Servs., Inc.,* 158 N.C. App. 727, 732, 582 S.E.2d 335, 339 (2003) (extraneity omitted).

2. Analysis

Rule 60(b)(1) of the North Carolina Rules of Civil Procedure provides that "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for . . . [m]istake, inadvertence, surprise, or excusable neglect[.]" N.C. Gen. Stat. § 1A-1, Rule 60(b)(1) (2025). "Rule 60(b)(6) authorizes relief from final judgments for any other reason justifying relief from the operation of the judgment." *N.C. Dep't of Transp. v. Laxmi Hotels of Spring Lake, Inc.*, 259 N.C. App. 610, 621, 817 S.E.2d 62, 71 (2018) (extraneity omitted). Relief pursuant to Rule 60(b)(6) is appropriate where " 'extraordinary circumstances exist' and 'justice demands relief.' " *Id.*

"A 60(b) order does not overrule a prior order but, consistent with statutory authority, relieves parties from the effect of an order." *Wallis,* 194 N.C. App. at 194, 670 S.E.2d at 242. However, because "Rule 60(b) provides no specific relief for errors of law[,]" *Davis v. Davis*, 360 N.C. 518, 523, 631 S.E.2d 114, 118 (2006), "judgments involving misapplication of the law may be corrected only by appeal . . . ." *Wallis*, 194 N.C. App. at 194, 670 S.E.2d at 242. A "Rule 60(b) motion[ ] cannot be used as a substitute for appeal." *Id.* at 194–95, 670 S.E.2d at 242.

Here, Defendant moved for relief pursuant to Rule 60(b), arguing that the trial

court "committed error in finding that . . . Plaintiff was entitled to that portion of land lying to the southeast" and requesting that the trial court "conduct a hearing to correct [the order] entered[.]" The trial court denied Defendant's motion on the grounds that Rule 60 "does not grant the [c]ourt the authority to make substantive modification to an entered judgment."

In her Rule 60(b) motion, Defendant sought relief from what she alleged was a misapplication of the law, which is properly corrected on appeal. Accordingly, the trial court did not abuse its discretion in denying Defendant's Rule 60(b) motion. *Id.* at 195, 670 S.E.2d at 242.

III. Conclusion

For the foregoing reasons, we dismiss Defendant's appeal of the order quieting title and affirm the trial court's order denying Defendant's Rule 60(b) motion.

DISMISSED IN PART; AFFIRMED IN PART.

Judges ARROWOOD and STADING concur.

Report per Rule 30(e).