An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA26-213

Filed 18 November 2026

Union County, No. 25CV001917-890

BAF ASSETS 4, LLC, Plaintiff,

v.

MELISSA LOZADA, Defendant.

Appeal by Defendant from order entered 30 October 2025 by Judge Christopher A. Gray in Union County District Court. Heard in the Court of Appeals 16 September 2026.

*Cruikshank Law Group, LLC, by Elizabeth Cruikshank, for the plaintiff-appellee.*

*Melissa Lozada, pro se, defendant-appellant.*

WOOD, Judge.

Melissa Lozada ("Defendant") appeals the trial court's order dismissing her appeal from magistrate's court to the district court and reinstating the magistrate's judgment and releasing the rent bond. Defendant argues the trial court wrongly dismissed her appeal for failing to appear at the hearing scheduled in district court

on 8 October 2025. For the reasons stated herein, we affirm the order of the trial court.

## I. Factual and Procedural Background

BAF Assets 4, LLC ("Plaintiff") brought an action for summary ejectment against Defendant. On 20 August 2025, after a summary ejectment hearing, the magistrate granted summary ejectment in favor of Plaintiff and entered judgment. On 29 August 2025, Defendant filed notice of appeal to the district court. A notice of hearing was entered on 8 September 2025 which stated Defendant's appeal was scheduled to be heard on 8 October 2025 at 9:30am. On 26 September 2025, Defendant filed an answer and asserted counterclaims, including that Plaintiff violated the law against renting unfit and unsafe premises.

On 8 October 2025, the trial court called the case for hearing at the designated time. Defendant was not present, and the trial court dismissed Defendant's appeal. The next day, Defendant filed a motion to set aside the dismissal and motion for relief from judgment pursuant to Rule 60(b). In her motion, Defendant admitted she was late to the hearing due to traffic and difficulty locating the proper courtroom. On 30 October 2025, the trial court entered its written order dismissing Defendant's appeal to district court and reinstating the magistrate's judgment and releasing the rent bond.

On 30 October 2025, Defendant timely entered notice of appeal of the order of dismissal and reinstatement of the magistrate's judgment and release of rent bond.

## II. Analysis

Defendant argues the trial court erred by dismissing her appeal before first considering lesser sanctions pursuant to *Wilder v. Wilder*. *See generally Wilder v. Wilder*, 146 N.C. App. 574, 578, 553 S.E.2d 425, 428 (2001) (discussing factors a trial judge must address before involuntarily dismissing a case pursuant to Rule 41(b)). However, Defendant's argument is misplaced. This matter was not dismissed pursuant to Rule 41(b).

Rather, in a small claims action, *as in the present case*, the trial court may dismiss an appeal pursuant to the authority set forth in N.C. Gen. Stat. § 7A-228(c). Consequently, "[w]henever such appeal is docketed and is regularly set for trial, and the appellant fails to appear and prosecute his appeal, the presiding judge may have the appellant called and the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed." N.C. Gen. Stat. § 7A-228(c). Because Defendant admittedly was not present when the case was called, the trial court did not err by dismissing her appeal for failing to appear.

We further note that while Defendant raises issues on appeal regarding her Rule 60(b) motion, that matter is not properly before this Court. Our review of the record does not reveal that Defendant calendared her Rule 60(b) motion for hearing or that a ruling on her motion was entered by the trial court. Therefore, only the order dismissing her appeal to district court is properly before us and we decline to address the issues raised by Defendant regarding her Rule 60(b) motion.

## III. Conclusion

For the reasons stated herein, we affirm the order of the trial court dismissing Defendant's appeal and reinstating the magistrate's judgment and releasing the rent bond.

AFFIRMED.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).