

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA09-1300

NORTH CAROLINA COURT OF APPEALS

Filed: 18 May 2010

MARY A. GORE,

Employee,  
Plaintiff-Appellant,

v.

N.C. Industrial Commission  
I.C. No. 025121

SOUTHWEST AIRLINES  
COMPANY,

Employer,

and

CAMBRIDGE INTEGRATED  
SERVICES,

Carrier,  
Defendants-Appellees,

Appeal by plaintiff from opinion and award of the Full Commission of the North Carolina Industrial Commission entered 11 May 2009 by Commissioner Bernadine S. Ballance. Heard in the Court of Appeals 25 February 2010.

*Mary A. Gore, Pro se, plaintiff-appellant.*

*Wilson & Ratledge, PLLC, by Paul F. Toland, for defendants-appellees.*

JACKSON, Judge.

Mary A. Gore ("plaintiff") appeals from an opinion and award of the Full Commission of the North Carolina Industrial Commission. For the reasons set forth below, we dismiss plaintiff's appeal.

Preliminarily, we note that plaintiff's brief fails to comport fully with the North Carolina Rules of Appellate Procedure. It is well settled that our Appellate Rules "are mandatory and not directory." *Reep v. Beck*, 360 N.C. 34, 38, 619 S.E.2d 497, 500 (2005). "Furthermore, [the Rules of Appellate Procedure] apply to everyone – whether acting *pro se* or being represented by all of the five largest law firms in the state." *Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999). *See also Strauss v. Hunt*, 140 N.C. App. 345, 348-49, 536 S.E.2d 636, 639 (2000) ("[E]ven *pro se* appellants must adhere strictly to the Rules of Appellate Procedure . . . or risk sanctions.") (citing N.C. R. App. P. 25(b)). However, we acknowledge that technical and "nonjurisdictional rule requirements normally should not lead to dismissal of the appeal." *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 198, 657 S.E.2d 361, 365 (2008).

Noncompliance with the rules falls along a continuum, and the sanction imposed should reflect the gravity of the violation. We clarify, however, that only in the most egregious instances of nonjurisdictional default will dismissal of the appeal be appropriate. *See [State v.] Hart*, 361 N.C. [309,] 311, 644 S.E.2d [201,] 202 [(2007)] ("[E]very violation of the rules does not require dismissal of the appeal or the issue, although some other sanction may be appropriate, pursuant to Rule 25(b) or Rule 34 . . . ."). *Cf. Harris v. Maready*, 311 N.C. 536, 551, 319 S.E.2d 912, 922 (1984) (observing that dismissal for failure to comply with procedural rules is an "extreme

sanction . . . to be applied only when . . . less drastic sanctions will not suffice"). In most situations when a party substantially or grossly violates nonjurisdictional requirements of the rules, the appellate court should impose a sanction other than dismissal and review the merits of the appeal. This systemic preference not only accords fundamental fairness to litigants but also serves to promote public confidence in the administration of justice in our appellate courts.

*Id.* at 200, 657 S.E.2d at 366.

Furthermore,

[i]n determining whether a party's noncompliance with the appellate rules rises to the level of a substantial failure or gross violation, the court may consider, among other factors, whether and to what extent the noncompliance impairs the court's task of review and whether and to what extent review on the merits would frustrate the adversarial process. . . . The court may also consider the number of rules violated . . . .

*Id.* at 200, 657 S.E.2d at 366-67 (internal citations omitted).

In the case *sub judice*, in approximately four pages of text comprising the substantive portions of plaintiff's brief, plaintiff failed to (1) limit the scope of our review pursuant to North Carolina Rules of Appellate Procedure<sup>1</sup>, Rule 10(a) by listing any assignments of error pursuant to Rule 10(c)(1); (2) "define clearly the questions presented to the reviewing court" in violation of Rule 28(a); (3) present "[a] statement of questions presented for review" in violation of Rule 28(b)(2); (4) provide "[a] concise

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<sup>1</sup> Plaintiff took her appeal prior to 1 October 2009; therefore, the 2007 version of our Appellate Rules is operative. See N.C. R. App. P. (2009).

statement of the procedural history<sup>2</sup> of the case[,]” which “indicate[s] the nature of the case and summarize[s] the course of proceedings up to the taking of the appeal before the court” in violation of Rule 28(b)(3); (5) provide “[a] statement of the grounds for appellate review[,] . . . includ[ing] citation[s] of the statute or statutes permitting appellate review”<sup>3</sup> in contravention of Rule 28(b)(4); (6) set forth “[a] full and complete statement of the facts”<sup>4</sup> as required by Rule 28(b)(5);” or (7) provide “[a]n argument, [which] contain[s] the contentions of the appellant with respect to each question presented[,]”<sup>5</sup> notwithstanding the requirements set forth by Rule 28(b)(6). Taken together, these numerous and gross violations of our appellate rules impair this Court’s ability to review plaintiff’s appeal effectively.

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<sup>2</sup> Plaintiff presented a “statement of organization from which appeal is taken.” (Original in all caps). In plaintiff’s statement, she lists the final order from which she appeals, but fails to present any of the preceding history.

<sup>3</sup> Plaintiff presented a “statement of jurisdiction.” (Original in all caps). In plaintiff’s statement, she noted that the parties agreed that they “were duly before the North Carolina Industrial Commission, and that[,] a[t] relevant times[,] the parties had an employer-employee relationship and were bound by the provisions of the Worker’s Compensation [A]ct.”

<sup>4</sup> Plaintiff presented both a “complaint introduction” and a “discussion.” (Original in all caps). Notwithstanding, based upon plaintiff’s complaint, this Court is unable to discern anything of the underlying factual basis of plaintiff’s appeal other than that it is an appeal related to a worker’s compensation claim.

<sup>5</sup> We already have noted that plaintiff failed to provide any assignments of error, and we further note that plaintiff’s “discussion” is so disjointed as to impair this Court’s review.

Furthermore, we are satisfied that the case *sub judice* does not present an "exceptional circumstance" sufficient to warrant review pursuant to Rule 2. See *Dogwood Dev. & Mgmt. Co., LLC*, 362 N.C. at 201, 657 S.E.2d at 367. Accordingly, pursuant to Appellate Rules 25(b), 34(a)(3), and 34(b)(1), we dismiss plaintiff's appeal for substantial noncompliance with the Appellate Rules. See *Dogwood Dev. & Mgmt. Co., LLC*, 362 N.C. at 199-200, 657 S.E.2d at 366-67.

Dismissed.

Judges ELMORE and STROUD concur.

Report per Rule 30(e).