

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA03-548

NORTH CAROLINA COURT OF APPEALS

Filed: 2 March 2004

WILLIAM H. SYKES,
Employee-Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 106105

MOSS TRUCKING COMPANY, INC.,
Employer-Defendant,

and

PROTECTIVE INSURANCE COMPANY, INC.,
Carrier-Defendant.

Appeal by plaintiff from opinions and orders entered 15 November 2002, 16 December 2002, and 3 January 2003 by the North Carolina Industrial Commission. Heard in the Court of Appeals 3 February 2004.

William H. Sykes, pro se, for plaintiff.

Morris, York, Williams, Surles & Barringer, L.L.P., by Stephen Kushner, for defendants.

WYNN, Judge.

In plaintiff's previous appeal of this case, *Sykes v. Moss Trucking Co., Inc.*, 142 N.C. App. 391, 544 S.E.2d 28 (2001)(unpublished)("Sykes I"), this Court pointed out "numerous violations of the Rules of Appellate Procedure." Indeed, this Court stated: "Plaintiff has failed to present his questions in clear, concise and non-argumentative fashion, and has failed to provide this Court with any legal basis for his arguments." *Id.* Notwithstanding his violations of the rules

in *Sykes I*, we exercised our discretion under Rule 2 of the Rules of Appellate Procedure and considered the merits of that appeal.

Now, in a second appeal to this Court plaintiff again violates the Rules of Appellate Procedure in several respects. First, Plaintiff's appeal violates N.C. R. App. P. 29(j) which states:

Principal briefs filed in the North Carolina Court of Appeals, whether filed by appellant, appellee, or amicus curiae, formatted according to Rule 26 and the Appendixes to these Rules, shall be limited to 35 pages of text, exclusive of subject index, tables of authorities, and appendixes. Reply briefs, if permitted by this Rule shall be limited to 15 pages of text.

Plaintiff submitted a 64 page brief, exceeding the allowable page limit by 29 pages. Responding to Defendants' contention that his appeal should be dismissed for this rule violation, Plaintiff stated "Plaintiff did his best to summarize his case, *knowing that he had exceeded the 35 page limit*, plaintiff previously apologized to this Court when filing for the length of his Brief, also asking the Court of Appeals to please accept Plaintiff-Appellant's Brief" (emphasis supplied). Notwithstanding his apology for his knowing rule violation, this Court has held "even *pro se* appellants must adhere strictly to the [Appellate rules] or risk sanctions." *Strauss v. Hunt*, 140 N.C. App. 345, 348-49, 536 S.E.2d 636, 639 (2000); *see also Bledsoe v. County of Wilkes*, 135 N.C. App. 124, 125, 519 S.E.2d 316, 317 (1999)(stating "these rules apply to everyone-- whether acting *pro se* or being represented by all of the five largest law firms in the State").

Plaintiff has also submitted an affidavit to his brief which contains additional facts. Such an affidavit is not allowed by our Rules of Appellate Procedure.

Moreover, Defendants, Moss Trucking, Inc. and Protective Insurance Company, moves this Court to strike the record on appeal because Plaintiff failed to comply with the directives of Commissioner Laura Kranifeld Mavretic in the preparation of the record on appeal. After

Defendants objected to Plaintiff's proposed record on appeal and submitted a proposed alternative record on appeal, Commissioner Mavretic ordered on 26 March 2003:

the record on appeal is SETTLED in accordance with Defendants' alternative proposed Record on Appeal as modified below:

...

2. An exhibit to the Record on Appeal may include, at plaintiff-appellant's discretion, a copy of the Record on Appeal filed by plaintiff-appellant in COA 00-344, *William H. Sykes v. Moss Trucking Company, Inc.*, [Sykes I] which was filed with the Court of Appeals for review in conjunction with the Court of Appeal's decision filed in this action on 20 February 2001; ...

In all other respects, the Record on Appeal shall be in accordance with Defendant's alternative proposed Record on Appeal.

Plaintiff violated Commissioner Mavretic's order by including more than 100 pages of material that was neither contained in Defendants' proposed record on appeal nor the record on appeal in COA00-344, the prior appeal before this Court. Additionally, Plaintiff included documents, which were ordered excluded from the record on appeal in COA00-344 pursuant to Defendants' objections, in the record on appeal in this case.

As stated earlier, the Rules of Appellate Procedure are mandatory and failure to follow the rules subjects an appeal to dismissal. Because of the numerous violations of the rules in this appeal, and because Plaintiff violated the clear and direct order of Commissioner Mavretic, we strike Plaintiff's record on appeal and dismiss his appeal. N.C. R. App. P. 25(b) and 34(b)(3).

Dismissed.

Judges McGEE and TYSON concur.

Report per Rule 30(e).