

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-1027

NORTH CAROLINA COURT OF APPEALS

Filed: 4 March 2008

CHARLES E. BROWN,
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 503132

VIA ELECTRIC COMPANY,
Employer,

CRAWFORD & COMPANY,
Carrier,
Defendants.

Appeal by plaintiff from opinion and award entered 2 April 2007 by Commissioner Laura Kranifeld Mavretic for the North Carolina Industrial Commission. Heard in the Court of Appeals 7 February 2008.

Charles E. Brown, pro se for plaintiff-appellant.

Hedrick, Gardner, Kincheloe & Garofalo, L.L.P., by Sharon E. Dent, for defendant-appellees.

TYSON, Judge.

Charles E. Brown (“plaintiff”) appeals from the Full Commission of the North Carolina Industrial Commission’s (“the Commission”) opinion and award denying plaintiff’s claim for workers’ compensation benefits. We dismiss the appeal for lack of jurisdiction.

I. Background

In January 2005, plaintiff was working for Via Electric Company (“defendant”) as an electrician. On 14 January 2005, plaintiff was “pulling wire” out of a junction box when plaintiff developed soreness in his left arm and shoulder. On 28 February 2005, plaintiff filed a Form 18 alleging he sustained an injury by accident to his left arm. On 29 June 2005, defendant filed a Form 61, which denied plaintiff’s worker compensation claim. Plaintiff filed a Form 33 request for hearing. On 23 August 2006, Deputy Commissioner Kim Letford filed an opinion and award concluding plaintiff’s injury did not result from an accident arising out of and in the course of his employment. On 2 April 2007, the Commission affirmed the opinion and award of the Deputy Commissioner with modifications. Plaintiff appeals.

II. Issue

Plaintiff argues the Commission erred by refusing to reconsider or receive further evidence concerning his injuries.

III. Notice of Appeal

N.C. Gen. Stat. §97-86 (2007) states, in relevant part, either party to the dispute may, within 30 days from the date of such award or within 30 days after receipt of notice to be sent by registered mail or certified mail of such award, but not thereafter, appeal from the decision of said Commission” to this Court. N.C. Gen. Stat. §97-86 further states, “[t]he procedure for the appeal shall be as provided by the rules of appellate procedure.”

N.C.R. App. P. 18 (2007) states, in relevant part:

(c) Composition of Record on Appeal. The record on appeal in appeals from an agency *shall contain*:

. . . .

(9) *a copy of the notice of appeal from the agency*, of all orders establishing time limits relative to the perfecting of the appeal, of any order finding a party to the appeal to be a

civil pauper, and of any agreement, notice of approval, or order settling the record on appeal and settling the verbatim transcript of proceedings if one is filed pursuant to Rule 9(c)(2) and (3)[.]

(Emphasis supplied). *See also Crowell Constructors, Inc. v. State ex rel. Cobey*, 328 N.C. 563, 563, 402 S.E.2d 407, 408 (1991) (holding the notice of appeal must be included in the record on appeal), *rev'd on other grounds*, 342 N.C. 838, 467 S.E.2d 675 (1996).

Our Supreme Court has stated that “[t]he appellant has the burden to see that all necessary papers are before the appellate court.” *Id.* Here, plaintiff failed to comply with Rule 18(c)(9) of the North Carolina Rules of Appellate Procedure. Because of plaintiff’s failure to include the notice of appeal in the record, this Court is deprived of jurisdiction to hear plaintiff’s appeal and it must be dismissed. *See Id.* at 563-64, 402 S.E.2d at 408 (“[Because] the record does not contain a notice of appeal . . . the Court of Appeals had no jurisdiction of the appeal.”).

Presuming plaintiff had included a notice of appeal in the record, N. C. R. App. P. 28(b)(6) (2007) precludes a review of the merits of plaintiff’s appeal. N.C.R. App. 28(b)(6) provides, in relevant part, “[a]ssignments of error not set out in the appellant’s brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.” Here, plaintiff wholly failed to present any legal argument or cite any authority in support of his assignments of error. All of plaintiff’s assignments of error are deemed abandoned. N.C.R. App. P. 28(b)(6).

IV. Conclusion

Plaintiff failed to comply with Rule 18(c)(9) of the North Carolina Rules of Appellate Procedure. Plaintiff’s failure to include a copy of the notice of appeal in the record deprives this Court of jurisdiction to hear plaintiff’s appeal. This appeal is dismissed. *Id.*; *Crowell Constructors, Inc.*, 328 N.C. at 563-564, 402 S.E.2d at 408.

Dismissed.

Judges GEER and STROUD concur.

Report per Rule 30(e).