

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA20-97

Filed: 15 December 2020

North Carolina Industrial Commission, I.C. No. TA-24298

STEPHEN T. CHARZAN, Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Defendant.

Appeal by Plaintiff from decision and order entered 17 September 2019 by the North Carolina Industrial Commission. Heard in the Court of Appeals 25 August 2020.

*Stephen Charzan, pro se Plaintiff-Appellant.*

*No brief filed on behalf of the North Carolina Department of Public Safety, Defendant-Appellee.*

McGEE, Chief Judge.

Stephen Charzan (“Plaintiff”) appeals from a decision and order entered by the North Carolina Industrial Commission denying his negligence claims against North Carolina Department of Public Safety (“Defendant”). We dismiss Plaintiff’s appeal.

Plaintiff filed a claim for damages under the North Carolina Tort Claims Act against Defendant on 9 June 2014. Plaintiff was then incarcerated at the Mountain

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View Correctional Institution (“MVCI”). He claimed employees at MVCI improperly seized a religious medallion and an attached chain. The employees sent the chain to Plaintiff’s sister in New York but returned the medallion to Plaintiff. Plaintiff claimed damages of \$25, which consisted of the costs he would incur to have the chain returned to him.

Defendant moved to dismiss Plaintiff’s claim, which was allowed by order entered 26 May 2015 by Deputy Commissioner Sumit Gupta. Plaintiff appealed to the Full Commission, which entered an order on 5 February 2016 reversing the dismissal of Plaintiff’s claim and remanding it to the Deputy Commissioner Section. Deputy Commissioner Theodore Danchi subsequently entered an Order of Default in favor of Plaintiff on 3 October 2017. Defendant appealed to the Full Commission, which reversed the Order of Default by order entered 22 June 2018 and again remanded the case to the Deputy Commissioner Section.

Deputy Commissioner William Peaslee conducted a full evidentiary hearing in the matter on 27 September 2018. By order entered 16 November 2018, Deputy Commissioner Peaslee concluded Plaintiff had failed to prove Defendant was negligent as a result of any actions or omission of its employees or agents, and denied Defendant’s claim. Plaintiff appealed to the Full Commission. The Full Commission reviewed Plaintiff’s appeal without oral argument and entered an order on 17 September 2019, in which it also concluded Plaintiff had failed to prove Defendant

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was negligent as a result of any actions or omission of its employees or agents and denied Plaintiff's claim. Plaintiff gave notice of appeal from the orders entered by the Full Commission and Deputy Commissioner Peaslee.

It is well established that "it is [the appellant's] burden to produce a record establishing the jurisdiction of the court from which appeal is taken, and his failure to do so subjects th[e] appeal to dismissal." *State v. Phillips*, 149 N.C. App. 310, 313-14, 560 S.E.2d 852, 855 (2002). The appellant's burden includes showing his notice of appeal was timely filed, and failure to do so is a jurisdictional error. *Bradley v. Cumberland Cty.*, 262 N.C. App. 376, 382, 822 S.E.2d 416, 420 (2018). To confer jurisdiction to this Court in appeals from the North Carolina Industrial Commission an appellant's notice of appeal must bear a time stamp or file stamp, or the record must contain some official indication from the Commission acknowledging notice of appeal was timely filed. *Id.*

In this case, although dated 3 October 2019, Plaintiff's notice of appeal is neither time stamped nor file stamped, and there is nothing in the record from the Commission indicating the date the notice of appeal was filed. Plaintiff has failed to show his notice of appeal was timely filed and that this Court has jurisdiction over his appeal. *See id.* ("We will not assume the notice of appeal was timely filed solely based upon Plaintiff's unverified notice of appeal."). Accordingly, we must dismiss

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Plaintiff's appeal. *Id.* at 382, 822 S.E.2d at 421 (“Subject matter jurisdiction cannot be waived by this Court or the parties . . .”).

DISMISSED.

Judges DILLON and MURPHY concur.

Report per Rule 30(e).