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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1116

Filed: 16 April 2019

North Carolina Industrial Commission, I.C. No. TA-26061

RONALD MANN, Plaintiff,

v.

UNION COUNTY CLERK OF COURT and MECKLENBURG COUNTY SHERIFF'S DEPARTMENT, Defendants.

Appeal by plaintiff from order entered 7 May 2018 by the North Carolina Industrial Commission. Heard in the Court of Appeals 27 March 2019.

*Ronald Mann, pro se.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Zachary Padgett, for the State.*

ARROWOOD, Judge.

Ronald Mann (“plaintiff”) appeals from order of the North Carolina Industrial Commission (the “Commission”) dismissing his tort claims with prejudice. Upon review, we dismiss plaintiff’s appeal.

I. Background

On 22 December 2016, plaintiff filed a Form T-1 “Claim for Damages Under Tort Claims Act” with attached exhibits/affidavits asserting negligence claims

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against the Union Count Clerk of Court (“UCCC”) and the Mecklenburg County Sheriff’s Department (“MCSD”) (together “defendants”) pursuant to N.C. Gen. Stat. § 143-291 *et seq.* Plaintiff alleged that he was damaged in the amount of \$1,000,000.00 by the negligence of a UCCC magistrate who issued a warrant for his arrest and by the negligence of a MCSD deputy who arrested him pursuant to the warrant. Plaintiff further alleged that both the UCCC and the MCSD were responsible for the negligence of their employees and were negligent in hiring, training, and supervising their employees.

On 23 January 2017, defendants filed “Motions to Dismiss, Motion to Strike, and Motion to Stay.” After plaintiff filed a brief and an affidavit in opposition to the motion to dismiss on 22 February 2017, and after plaintiff filed a motion for summary judgment with a brief and an affidavit supporting the motion on 24 March 2017, the motions came on for hearing before Deputy Commissioner Robert J. Harris on 19 April 2017. On 3 May 2017, the deputy commissioner filed an order dismissing plaintiff’s claims against both defendants. Defendant filed notice of appeal from the deputy commissioner’s order to the full commission on 25 May 2017 and filed a Form T-44 “Application for Review” on 29 June 2017.

The Full Commission heard the matter on 11 October 2017 and, upon review of the deputy commissioner’s order, the application for review, and the briefs and arguments of the parties, filed an order on 7 May 2018 upholding the dismissal of

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plaintiff's claims with prejudice. A certificate of service by the Commission shows that the order was mailed to plaintiff on the day the order was filed.

Plaintiff requested this Court's review of the full commission's 7 May 2018 order by letter to the Commission dated 30 May 2018. A certificate of service signed by plaintiff months later on 31 July 2018 states that plaintiff mailed a copy of his notice of appeal to the Commission on 31 May 2018.

II. Appellate Jurisdiction

As this Court recently explained, “[t]his Court has the power to inquire into jurisdiction at any time, even *sua sponte*.” *Bradley v. Cumberland Cnty.*, \_\_ N.C. App. \_\_, \_\_, 822 S.E.2d 416, 417 (2018). “We must have jurisdiction to hear the cases before us, and our power to hear those cases must be ‘properly invoked by an interested party.’” *Id.* at \_\_, 822 S.E.2d at 417-18 (quoting *Dogwood Dev. & Mgmt. Co., LCC v. White Oak Transp.*, 362 N.C. 191, 197, 657 S.E.2d 361, 364 (2008)). “When an appealing party fails to follow the steps necessary to vest this Court with jurisdiction, we cannot review the case on the merits, and the appeal must be dismissed.” *Id.* at \_\_, 822 S.E.2d at 418.

This Court further explained in *Bradley* that an interested party may appeal from a decision of the Commission to this Court by providing notice of appeal within 30 days as provided by the rules of appellate procedure. *Id.* at \_\_, 822 S.E.2d at 418 (citing N.C. Gen Stat. § 97-86 (2017); *see also* N.C.R. App. P. Rule 18 (2019)).

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Appellants can demonstrate timely filing of a notice of appeal by including in the appellate record some form of acknowledgement from the Industrial Commission stating when the Commission received the notice of appeal. Such acknowledgement includes, *inter alia*, providing a time-stamped copy of a notice of appeal or a letter from the Industrial Commission acknowledging receipt of a notice of appeal.

*Id.* at \_\_\_, 822 S.E.2d at 418 (citation omitted). Furthermore, “[c]opies of all papers filed by any party and not required by these rules to be served by the clerk shall, *at or before the time of filing*, be served on all other parties to the appeal.” *Id.* at \_\_\_, 822 S.E.2d at 419 (quoting N.C.R. App. P. Rule 26(b)) (emphasis in original).

“Generally, violations of Rule 3 are jurisdictional and warrant dismissal of an appeal. However, certain violations of the appellate rules are non[-]jurisdictional and do not invariably warrant dismissal of an appeal.” *Id.* at \_\_\_, 322 S.E.2d at 418 (citing *Dogwood*, 362 N.C. at 197, 200, 657 S.E.2d at 364, 365) (citations omitted).

In *Bradley*, this Court found errors with the plaintiff’s filing and service of a notice of appeal from a Commission decision. *Id.* at \_\_\_, 322 S.E.2d at 419. This Court recognized that errors in the service of a notice of appeal are non-jurisdictional errors, but errors in the filing of a notice of appeal are jurisdictional. *Id.* at \_\_\_, 322 S.E.2d at 420. Thus, this Court held the plaintiff’s improper service of the notice of appeal by email, the plaintiff’s failure to include a certificate of service in the record on appeal, and the plaintiff’s failure to designate the court to which appeal was being taken did not require dismissal of the appeal because there was actual notice of the appeal and

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the violations did not constitute substantial or gross violations of the rules. *Id.* at \_\_\_, 322 S.E.2d at 419-20. Nevertheless, this Court determined that the plaintiff's appeal must be dismissed because, "there [was] no indication that [the p]laintiff's notice of appeal was timely filed, which is a jurisdictional error." *Id.* at \_\_\_, 322 S.E.2d at 420. Although the notice of appeal was timely dated and signed by counsel, this Court specifically noted that the notice of appeal did not bear a time stamp or file stamp and there was no other indication in the record on appeal from the commission acknowledging notice of appeal was timely filed, despite a request by the plaintiff that receipt of the notice be confirmed. *Id.* at \_\_\_, 322 S.E.2d at 420.

Similar to *Bradley*, in the present case, although plaintiff's letter to the Commission requesting review by this Court is timely dated, there is no indication from the Commission that the notice of appeal was timely received, either by time stamp, file stamp, or other correspondence from the Commission. Although there is a certificate of service, it is dated months after the notice of appeal and there is also no indication from the Commission acknowledging receipt of the certificate of service.<sup>1</sup>

"[I]t 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

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<sup>1</sup> We additionally note that the record does not indicate plaintiff served notice of appeal on the opposing party, a non-jurisdictional error. *See Bradley*, \_\_ N.C. App. at \_\_\_, 822 S.E.2d at 419; N.C.R. App. P. Rule 26(b).

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to dismissal.” *Id.* at \_\_\_, 322 S.E.2d at 421. Because an error in filing notice of appeal is a jurisdictional violation of Rule 3 and cannot be waived, we must dismiss plaintiff’s appeal in this case.

III. Conclusion

For the reasons discussed, plaintiff’s appeal from the order of the Commission dismissing his claims is dismissed.

DISMISSED.

Judges BRYANT and DILLON concur.

Report per Rule 30(e).