

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA15-1147

Filed: 17 May 2016

N.C. Industrial Commission, I.C. Nos. Y16313, PH-3197

DARRYL RAY SMITH, Employee, Plaintiff,

v.

MICHAEL W. YOUNG d/b/a CAMARO SPECIALTY CO., Employer, NONINSURED,
and MICHAEL W. YOUNG, Individually, Defendants.

Appeal by plaintiff from Opinion and Award of the North Carolina Industrial Commission entered 7 August 2014. Heard in the Court of Appeals 2 May 2016.

Darryl Ray Smith, pro se.

No brief filed by defendants-appellees.

McCULLOUGH, Judge.

Darryl Ray Smith (“plaintiff”) appeals from an opinion and award of the North Carolina Industrial Commission (the “Commission”) dismissing his workers’ compensation claim for lack of subject matter jurisdiction. We dismiss the appeal.

I. Background

In an opinion and award filed on 7 August 2014, the Commission found and concluded that (1) defendant Michael Young d/b/a/ Camaro Specialty Co. “did not regularly employ three or more employees at the time of Plaintiff’s injury” and,

therefore, “is not subject to the provisions of the Workers’ Compensation Act[;]” and (2) at the time of his injury, plaintiff worked for defendant as an independent contractor, not as an employee. Therefore, the Commission was “without jurisdiction” to consider plaintiff’s claim. Plaintiff appeals.

II. Discussion

Plaintiff’s appeal to this Court is non-compliant with multiple provisions of the North Carolina Rules of Appellate Procedure. While the record on appeal includes a “Petition to Appeal as an Indigent Person” filed by plaintiff with the Commission on 3 September 2014, it lacks a proper notice of appeal under N.C. R. App. P. 18(c). The record on appeal also lacks any indication that plaintiff engaged defendants in the process of settling the record on appeal in accordance with N.C. R. App. P. 18(d). Plaintiff’s appellate brief does not include proof of service upon defendants as required by N.C. R. App. P. 13(a), 18(e), 28(b)(9), or any of the following: a statement of the issues presented for review; a statement of the procedural history of the case; a statement of the grounds for appellate review; a full and complete statement of the facts; and an argument setting forth the applicable standards of review and citations to relevant authority. N.C. R. App. P. 28(b)(2)-(6). Finally, plaintiff has failed to provide this Court with a transcript or narrative of the evidence which would allow a review of the Commission’s fact-finding. *See* N.C. R. App. P. 9(c)(1), 18(c)(6).

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Opinion of the Court

Assuming *arguendo* that plaintiff's affidavit of indigency may be construed as a jurisdictionally sufficient notice of appeal, we conclude that his additional "noncompliance with the appellate rules rises to the level of a substantial failure or gross violation" warranting dismissal of the appeal pursuant to N.C. R. App. P. 34(b). *Dogwood Dev. & Mgmt. Co. v. White Oak Transp. Co.*, 362 N.C. 191, 200-01, 657 S.E.2d 361, 366-67 (2008). Plaintiff does not present this Court with a discernible argument for relief; nor has he satisfied the minimal requirements of our adversarial process. *See id.* at 200, 657 S.E.2d at 366. We are mindful of plaintiff's *pro se* status but cannot overlook the gross violations of our appellate rules at issue here. *See Strauss v. Hunt*, 140 N.C. App. 345, 348-49, 536 S.E.2d 636, 639 (2000) (citing N.C. R. App. P. 25(b)). Accordingly, we dismiss the appeal.

DISMISSED.

Chief Judge McGEE and Judge ZACHARY concur.

Report per Rule 30(e).