

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-832

No. COA22-270

Filed 6 December 2022

New Hanover County, No. 19CVS2724

WATER DAMAGE EXPERTS OF HILLSBOROUGH, LLC, a Florida Limited Liability Company, Plaintiff,

v.

KARL W. MILLER, EQUITY TRUST COMPANY as Custodian FBO the KARL W. MILLER IRA, and ASHLEY W. MILLER, Defendants.

Appeal by defendants from judgment and order entered 2 September 2021 by Judge Phyllis M. Gorham in New Hanover County Superior Court. Heard in the Court of Appeals 4 October 2022.

*Chris Haaf Law PLLC, by Chris W. Haaf, for defendants-appellants.*

*The Regan Law Firm, PLLC, by Conor P. Regan, for plaintiff-appellee.*

GORE, Judge.

¶ 1

Defendants, Karl W. Miller and Equity Trust Company as Custodian FBO the Karl Miller IRA, appeal the trial court's Judgment and Order granting summary judgment in favor of plaintiff Water Damage Experts of Hillsborough, LLC, and denying defendants' motion for leave to amend their answer. Defendant Ashley Miller is no longer party to the underlying case or this appeal. Upon review, this

WATER DAMAGE EXPERTS OF HILLSBOROUGH, LLC V. MILLER

2022-NCCOA-832

*Opinion of the Court*

Court lacks appellate jurisdiction to consider defendants' arguments.

¶ 2 When appeal is taken to this Court, the burden is on appellant “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.” *Bradley v. Cumberland Cnty.*, 262 N.C. App. 376, 382, 822 S.E.2d 416, 421 (2018), (alteration in original) (quotation marks and citation omitted), *rev. denied*, 372 N.C. 360, 828 S.E.2d 156 (2019).

¶ 3 Here, defendants' notice of appeal is dated “September 27, 2021”, but this document does not have a file-stamp affixed or other notation from the trial court. “[T]his Court has held the appellant’s failure to include a file-stamped copy of the notice of appeal in the record on appeal is a jurisdictional defect, because this Court cannot determine if the notice of appeal was timely filed.” *Erickson v. N.C. Dep’t of Pub. Safety*, 264 N.C. App. 700, 703, 826 S.E.2d 821, 824 (2019) (citation omitted); *see also* N.C.R. App. P. 3. “We will not assume the notice of appeal was timely filed solely based upon [appellant’s] unverified notice of appeal.” *Bradley*, 262 N.C. App. at 382, 822 S.E.2d at 420. “Without proper notice of appeal, the appellate court acquires no jurisdiction and neither th[is] [C]ourt nor the parties may waive the jurisdictional requirements even for good cause shown under Rule 2.” *Bromhal v. Stott*, 116 N.C. App. 250, 253, 447 S.E.2d 481, 483 (1994) (citations omitted); *see also Hart v. Thomasville Motors, Inc.*, 244 N.C. 84, 88, 92 S.E.2d 673, 676 (1956) (Subject matter jurisdiction “cannot be obtained by consent of the parties, waiver, or estoppel.”).

WATER DAMAGE EXPERTS OF HILLSBOROUGH, LLC V. MILLER

2022-NCCOA-832

*Opinion of the Court*

¶ 4 We must therefore dismiss this appeal for lack of appellate jurisdiction. *See, e.g., Bradley*, 262 N.C. App. at 382, 822 S.E.2d at 421.

DISMISSED.

Chief Judge STROUD and Judge MURPHY concur.

Report per Rule 30(e).