NO. COA10-874
NO. COA10-875
NO. COA10-891

NORTH CAROLINA COURT OF APPEALS

Filed: 1 March 2011

LINDA S. LUCAS,
Plaintiff-Appellant,

v.

Bladen County
No. 08 CVD 884

R.K. LOCK & ASSOCIATES, an Illinois general partnership d/b/a Credit Collections Defense Network or CCDN; FEDERAL DEBT RELIEF SYSTEM, a California general partnership; ROBERT K. LOCK Esq.; COLLEEN LOCK; PHILIP M. MANGER Esq.; and MARK A. CELLA,
Defendants-Appellees.

WILLIAM G. HARRISON, SR., for himself and on behalf of all others similarly situated,
Plaintiff-Appellant,

v.

Bladen County
No. 08 CVD 885

AEGIS CORPORATION, a Missouri corporation; DEBT JURISPRUDENCE, INC., a Missouri corporation; R.K. LOCK & ASSOCIATES, an Illinois general partnership d/b/a Credit Collections Defense Network or CCDN; ROBERT K. LOCK Esq.; COLLEEN LOCK; PHILIP M. MANGER Esq.; M. DAVID KRAMER; MARCIA M. MURPHY; and TRACY WEBSTER,
Defendants-Appellees.

CATHY HORTON HUNT,
Plaintiff-Appellant,

v. Bladen County
No.08 CVD 883

R.K. LOCK & ASSOCIATES, an Illinois general partnership d/b/a Credit Collections Defense Network or CCDN; ROBERT K. LOCK Esq.; COLLEEN LOCK; PHILIP M. MANGER Esq.; TRACY WEBSTER; and LAWGISTIX, LLC, a Florida limited liability company,
Defendants-Appellees.

Appeal by Plaintiffs and Plaintiffs' counsel, Christopher W. Livingston, from orders entered 29 October 2009, *nunc pro tunc* 18 September 2009, by Judge Sherry Dew Tyler in District Court, Bladen County. Heard in the Court of Appeals 11 January 2011. Pursuant to N.C.R. App. P. 40, these cases were consolidated for hearing as the issues presented to this Court by the appeals of Plaintiffs and Plaintiffs' Counsel involve common questions of law.

Christopher W. Livingston for Plaintiffs-Appellants; and Christopher W. Livingston, pro se.

No brief filed for Defendants-Appellees.

McGEE, Judge.

Linda S. Lucas, William G. Harrison, Sr.,[1] and Cathy Horton Hunt (Plaintiffs) initiated these actions by three separate

[1] William G. Harrison, Sr.'s complaint was also filed "in a representative capacity on behalf of others." The "others" were alleged to represent a class "composed of all persons in the United States of America . . . who have suffered actual loss by the same means as Named Plaintiff."

complaints filed 12 September 2008[2] by Plaintiffs' attorney, Christopher W. Livingston (Livingston). Relevant to these appeals, Defendants named in these complaints included "R.K. LOCK & ASSOCIATES, an Illinois general partnership dba Credit Collections Defense Network or CCDN;" "Robert K. LOCK, Jr. Esq." (Lock); "Colleen LOCK;" "Philip M. MANGER Esq." (Manger); and "Tracy WEBSTER[.]" The actions against the other named defendants in Plaintiffs' complaints were dismissed by orders not subject to this appeal.

Plaintiffs' actions sought money damages for an alleged scam on the part of Defendants whereby Defendants promised to assist Plaintiffs in legally avoiding payment of credit card debt in return for a fee. Plaintiffs alleged Defendants' actions constituted unfair and deceptive trade practices, fraud, breach of contract, gross and willful legal malpractice, violations of the "North Carolina Racketeer and Corrupt Organizations Act," violations of the "Credit Repair Organizations Act," and violations of the "Racketeer Influenced and Corrupt Organizations Act." Livingston had previously entered into an "Associate Attorney Agreement" (the agreement) with Credit Collections Defense Network (aka CCDN and CCDN, LLC), which described itself in the agreement

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[2] Almost none of the file stamps in the records submitted by Appellants in these appeals is legible. We stress that it is Appellants' duty to insure that the records before us are complete and sufficient for appellate review. Because the file dates are not essential for any issues we settle on appeal, we will use the file dates Appellants supply in their briefs, though we do not verify their accuracy.

as "a national network of consumer protection attorneys, paralegals and administrative support personnel ('CCDN, LLC')[.]" Pursuant to the agreement, Livingston was to represent clients referred by CCDN, LLC. He would provide legal services to those clients and they would pay a fee to CCDN, LLC. Livingston would be paid by CCDN, LLC, pursuant to a fee schedule included in the agreement. Livingston had the right to reject clients if he did not find them acceptable. The agreement was signed on behalf of CCDN, LLC by Lock.

Livingston accepted client referrals from CCDN, LLC, including Plaintiffs. According to Livingston, once CCDN, LLC referred clients, and Livingston had reviewed the documents CCDN, LLC wanted him to file on behalf of the clients, he realized CCDN, LLC's methods were not legally sound. Livingston stated that, upon further investigation, he realized that CCDN, LLC was conducting a scam. Livingston also stated he attempted to locate CCDN, LLC by checking to see if the company was registered (1) in North Carolina because it was doing business in North Carolina; (2) in Illinois because there was an Illinois mailing address listed on the agreement; (3) in New York because CCDN, LLC had an office in New York; and (4) in Delaware because Delaware was a popular state for incorporation. However, CCDN, LLC was not registered in any of those states. Livingston determined that Lock's law firm, R.K. Lock & Associates, shared the same mailing address as CCDN, LLC. Livingston came to believe there was no limited liability company registered as CCDN, LLC and he filed these actions on behalf of

Plaintiffs. Livingston named relevant Defendants as listed above. He did not include CCDN, LLC as a Defendant. CCDN, LLC was the legal name of Credit Collections Defense Network (or CCDN), and CCDN, LLC was registered as a limited liability company in Nevada.

Defendants did not initially respond to the filed actions. Plaintiffs moved for entries of default against Defendants and defaults were entered. Plaintiffs filed motions for default judgments on 18 November 2008. In 08 CVD 885, Judge Thomas V. Aldridge heard Plaintiff's motions for arrest and bail against Lock and Manger on 21 November 2008. Judge Aldridge entered orders for the arrest of Lock and Manger on 8 December 2008, and he set bail for both Defendants at $250,000.00.

Defendants filed motions to dismiss in 08 CVD 883 and 08 CVD 884 on 8 December 2008. For some reason unexplained by the record, Defendants did not file a motion to dismiss in 08 CVD 885 until 11 February 2009. All of Defendants' motions were to be heard on 13 February 2009 by Judge Napoleon B. Barefoot, Jr. Judge Barefoot believed that, because of the agreement, Livingston was an attorney for CCDN, LLC, and could not represent Plaintiffs against CCDN, LLC, because it would constitute a conflict of interest. Judge Barefoot therefore removed Livingston as Plaintiffs' counsel by order entered 27 February 2009, and he continued the other matters to give Plaintiffs an opportunity to hire substitute counsel. H. Clifton Hester (Hester) filed an entry of limited appearance on 10 March 2009 in order to argue a Rule 59 motion to reconsider Judge Barefoot's order removing Livingston as Plaintiffs' counsel. A

hearing was conducted before Judge Barefoot on 27 April 2009 and Hester made a limited appearance to argue the Rule 59 motion on behalf of Livingston. Following arguments on this matter, Judge Barefoot set aside the prior order removing Livingston as counsel for Plaintiffs, and ruled that Livingston could represent the Plaintiffs because CCDN, LLC was not a party to the actions.

The hearing before Judge Barefoot also addressed Defendants' motions to dismiss. Judge Barefoot entered orders on 19 May 2009, whereby he concluded the trial court had no personal jurisdiction over Defendants, and that CCDN, LLC was a necessary party to the actions but had not been made a party to the actions by Plaintiffs. Judge Barefoot then ordered that: (1) the arrest and bail order be set aside for lack of personal jurisdiction over Defendants; (2) the entries of default be vacated for the same reason; and (3) the actions be dismissed without prejudice to re-file, naming CCDN, LLC as a party.

Lee W. Bettis, Jr. (Bettis), on behalf of CCDN, LLC, filed motions for Rule 11 sanctions against Livingston on 13 May 2009. Plaintiffs, purportedly pursuant to Rule 59, filed motions to reconsider Judge Barefoot's 19 May 2009 orders on 22 May 2009. These issues were heard before Judge Sherry Dew Tyler on 18 September 2009. Judge Tyler entered orders 29 October 2009, *nunc pro tunc* 18 September 2009, denying Plaintiffs' motions, and granting CCDN, LLC's motions for Rule 11 sanctions against Livingston and Plaintiffs, jointly and severally. Plaintiffs appealed from the portions of Judge Tyler's orders denying

reconsideration of Judge Barefoot's 19 May 2009 orders, and Livingston appealed from Judge Tyler's orders imposing Rule 11 sanctions.

Plaintiffs' Appeals

We hold that Plaintiffs' appeals are not properly before us and we must therefore dismiss them.

> "Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal with the clerk of superior court . . . ." N.C.R. App. P. 3(a) (2008). "The notice of appeal required to be filed and served by subdivision (a) of this rule . . . *shall designate the judgment or order from which appeal is taken* and the court to which appeal is taken . . . ." N.C.R. App. P. 3(d) (emphasis added).
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> "Appellate Rule 3 requirements for specifying judgments are jurisdictional in nature." "'[J]urisdiction cannot be conferred by consent, waiver, or estoppel[;] . . . [j]urisdiction rests upon the law and the law alone.'" "As such, the appellate court obtains jurisdiction only over the rulings specifically designated in the notice of appeal as the ones from which the appeal is being taken." "Without proper notice of appeal, this Court acquires no jurisdiction."

Warner v. Brickhouse, 189 N.C. App. 445, 448-49, 658 S.E.2d 313, 316 (2008) (internal citations omitted).

Plaintiffs' notices of appeal stated:

> [Plaintiffs] and [Livingston] hereby give notice of appeal to the Court of Appeals of North Carolina from the [o]rders entered on or about 29 October 2009 in the District Court of Bladen County, Hon. Sherry Dew Tyler, District Court Judge presiding, denying Plaintiff[s'] motion for rehearing of the order entered 18 May 2009 by the Hon. Napoleon B. Barefoot, Jr. (which dismissed [their complaints] and found

> that . . . Livingston allegedly has a conflict of interest as to CCDN, LLC), and the order[s] imposing Rule 11 sanctions on . . . Livingston[.]

These notices of appeal are only sufficient to appeal the orders entered on 29 October 2009, denying Plaintiffs' motions for "rehearing," purportedly made pursuant to "N.C.G.S. § 1A-1, Rule 59." These notices of appeal are not sufficient to preserve for appellate review the underlying 18 May 2009 orders entered by Judge Barefoot. "Notice of appeal from denial of a motion to set aside a judgment which does not also specifically appeal the underlying judgment does not properly present the underlying judgment for our review." *Von Ramm v. Von Ramm*, 99 N.C. App. 153, 156, 392 S.E.2d 422, 424 (1990) (citation omitted); *see also Croom v. Hedrick*, 188 N.C. App. 262, 270-71, 654 S.E.2d 716, 722 (2008).

Furthermore, though Plaintiffs purport to request rehearings pursuant to Rule 59, their motions are not sufficient to meet the requirements of proper Rule 59 motions. Our Court discussed the sufficiency of a Rule 59 motion in *N.C. Alliance for Transp. Reform, Inc. v. N.C. Dep't of Transp.*, 183 N.C. App. 466, 645 S.E.2d 105 (2007). In *N.C. Alliance*, the appellants stated in their motion that it was filed pursuant to Rule 59(e). Our Court reasoned:

> Rule 59(e) governs motions to alter or amend a judgment, and such motions are limited to the grounds listed in Rule 59(a). N.C. Gen. Stat. § 1A-1, Rule 59(e) (2005). Rule 59(a) lists nine grounds or causes upon which a new trial may be granted. N.C. Gen. Stat. § 1A-1, Rule 59(a) (2005). Petitioners, in their brief, argue that the grounds alleged in their motion fall within Rule 59(a)(2) (misconduct of the

> prevailing party), 59(a)(7) (insufficiency of the evidence to justify the verdict or the verdict is contrary to law), and 59(a)(8) (error in law occurring at trial and objected to by party making the Rule 59 motion). However, in their Motion to Alter or Amend, petitioners did not make reference to any of these grounds of Rule 59(a), nor did they use any of the language from the rule which would tend to give notice of their reliance on any of the foregoing grounds. Most crucially, however, the grounds listed by petitioners do not "reveal[] the basis of the motion" in terms of the 59(a) grounds. In fact, it would have been equally as possible for petitioners to argue that the grounds for the motion arose from Rule 59(a)(4) (newly discovered evidence material for the party making the motion which could not, with reasonable diligence, have been discovered and produced at the trial) as it was for them to argue 59(a)(2), (7), and (8).

Id. at 469, 645 S.E.2d at 108 (internal citations omitted). Our Court determined:

> The trial court correctly concluded that "[t]o qualify as a Rule 59 motion . . . the motion must 'state the grounds therefor' and the grounds stated must be among those listed in Rule 59(a)." We note that "[w]hile failure to give the number of the rule under which a motion is made is not necessarily fatal, the grounds for the motion and the relief sought must be consistent with the Rules of Civil Procedure." [T]his Court specifically held that "[t]he motion, to satisfy the requirements of Rule 7(b)(1), must supply information revealing the basis of the motion." [*See*] N.C. Gen. Stat. § 1A-1, Rule 7(b)(1) (2005) (requiring a motion to "state with particularity the grounds therefor"). In the present case, the basis of the motion was not apparent from the grounds listed, leaving the trial court and the opposing party to guess what the particular grounds might be. Although such deficiency would alone be adequate basis for dismissal of the motion, the trial court also found that petitioners simply sought to reargue matters from the earlier hearing, additionally supporting the

> court's conclusions that the Motion to Alter or Amend was not a proper Rule 59(e) motion. *See Smith*, 125 N.C. App. at 606, 481 S.E.2d at 417 (holding a Rule 59(e) motion "cannot be used as a means to reargue matters already argued or to put forth arguments which were not made but could have been made" and a motion that does so "cannot be treated as a Rule 59(e) motion"). Accordingly, the trial court properly held that the Motion to Alter or Amend violated Rule 7(b)(1) and was not a proper Rule 59(e) motion.

Id. at 469-70, 645 S.E.2d at 108 (internal citations omitted). This is because "[t]o qualify as a Rule 59 motion within the meaning of Rule 3 of the Rules of Appellate Procedure, the motion must 'state the grounds therefor' and the grounds stated must be among those listed in Rule 59(a)." *Smith v. Johnson*, 125 N.C. App. 603, 606, 481 S.E.2d 415, 417 (1997) (citations omitted).

In the present case, Plaintiffs' motions did not make reference to any of the grounds of Rule 59(a), nor did the motions use any language from Rule 59(a) that would tend to give notice of their reliance on any of the provisions of that rule. Plaintiffs' motions did not in any manner give notice concerning which of the Rule 59(a) grounds Plaintiffs were relying on when seeking Rule 59 relief. Plaintiffs' motions were therefore not proper Rule 59 motions, and Plaintiffs' appeals from the denial of those motions must be dismissed. *Ice v. Ice*, 136 N.C. App. 787, 789-90, 525 S.E.2d 843, 845 (2000); *see also Meehan v. Cable*, 135 N.C. App. 715, 721, 523 S.E.2d 419, 423 (1999), *Waddell v. Williams*, 149 N.C. App. 671, 562 S.E.2d 605, 2002 N.C. App. LEXIS 1804, 10-11 (Apr. 2, 2002) (unpublished opinion).

In addition, unlike the appellants in *N.C. Alliance*,

Plaintiffs do not argue even on *appeal* that any of the Rule 59(a) grounds supported their motions for "rehearing." Plaintiffs also do not include the standard of review applicable to appellate review of the denial of Rule 59 motions. Nothing in Plaintiffs' arguments indicate they are appealing from the denials of their motions for "rehearing" except one reference to Judge Tyler. Relevant issues on appeal as presented by Plaintiffs are as follows:

> 1. Did the trial court err in its findings of no minimum contacts and dismissing the Complaint[s] for lack of jurisdiction over Defendants' persons?
>
> 2. Did the trial court err as a matter of law in ruling CCDN, LLC a necessary party and dismissing the Complaint[s] for failure to join it?
>
> 3. Did the trial court abuse its discretion in disqualifying [Livingston] from representing [Plaintiffs] against CCDN, LLC?
>
> . . . .
>
> 5. Did Judge Barefoot err as a matter of law in denying the motion to recuse, and did Judge Tyler display actual bias in failing to disqualify [Bettis] for flagrant conflict of interest and by disparate treatment of [Livingston]?
>
> 6. Did the trial court manifestly abuse its discretion in setting aside entries of default when Appellees showed no cause whatsoever for so doing?
>
> 7. Was the trial court without jurisdiction to set aside orders of arrest and bail, and the findings and conclusions therein, after they became final [in 08 CVD 885]?

Plaintiffs' arguments, excepting number five, are directed to the underlying 18 May 2009 orders entered by Judge Barefoot. As we

have stated above, those orders are not before us on appeal. Concerning Plaintiffs' argument in number five that Judge Barefoot erred in denying their motions to recuse, Livingston moved in open court to dismiss Plaintiffs' motions asking for Judge Barefoot to recuse himself, and Judge Barefoot granted those motions. In addition, Plaintiffs did not mention recusal in their motions for rehearing, and Judge Tyler did not address the issue of recusal in her orders. Judge Tyler's orders are the only orders before us. Concerning Plaintiffs' claim that Judge Tyler displayed "actual bias in failing to disqualify defense counsel for flagrant conflict of interest and by disparate treatment," at the hearing Plaintiffs never requested that Bettis be disqualified, nor did Livingston argue to Judge Tyler that he was being subjected to disparate treatment. Having failed to make these arguments to the trial court, Plaintiffs may not now make them for the first time on appeal. N.C.R. App. P. 10(b)(1); *State v. Jacobs*, __ N.C. App. __, __, 688 S.E.2d 112, 114 (2010).

Plaintiffs fail to argue in their briefs that the trial court erred because one or more of the grounds in Rule 59(a) supported Plaintiffs' motions for "rehearing." Therefore, any such arguments have been abandoned. N.C.R. App. P. 28(b)(6); *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 200, 657 S.E.2d 361, 367 (2008). Plaintiffs' appeals are dismissed.

Livingston's Appeals

Livingston appeals from Judge Tyler's orders of 29 October 2009, *nunc pro tunc* 18 September 2009, imposing sanctions pursuant

to Rule 11 of the North Carolina Rules of Civil Procedure. N.C. Gen. Stat. § 1A-1, Rule 11 (2009). Because we hold that motions signed by Bettis on 13 May 2009 did not vest jurisdiction in the trial court to consider the requested Rule 11 sanctions, we vacate Judge Tyler's 29 October 2009 orders imposing sanctions pursuant to Rule 11.

Defendants, through their attorney Bettis, successfully argued to the trial court that Plaintiffs' complaints were improper because Plaintiffs failed to name a necessary party, being CCDN, LLC.[3] Plaintiffs' complaints named as a Defendant "R.K. Lock & Associates, an Illinois general partnership dba Credit Collections Defense Network or CCDN." Defendants argued, and the trial court agreed, that this was insufficient to make CCDN, LLC, a Nevada limited liability company, a party to the actions now on appeal. This ruling has not been challenged. Therefore, CCDN, LLC is neither a defendant, nor a party of any kind, to this action. However, in the 13 May 2009 motions for Rule 11 sanctions, the prayer for relief is stated as follows: "WHEREFORE, Defendant, CCDN, LLC, respectfully moves the [c]ourt for attorney fees and costs of [d]efending this action." "If a party does not have standing to bring a claim, a court has no subject matter jurisdiction to hear the claim." *Estate of Apple v. Commercial Courier Express, Inc.*, 168 N.C. App. 175, 177, 607 S.E.2d 14, 16 (2005) (citations omitted). Because CCDN, LLC was not a

[3] We note that we make no determination on the merits of this issue, as it is not properly before us.

"Defendant" in any of these actions, and had not been brought in as a party in any of these actions, CCDN, LLC had no standing to request Rule 11 sanctions related to these actions. *Estate of Apple*, 168 N.C. App. at 177, 607 S.E.2d at 16. The trial court lacked jurisdiction to impose sanctions pursuant to these motions. *Estate of Apple*, 168 N.C. App. at 177, 607 S.E.2d at 16. We therefore vacate the 29 October 2009 orders imposing Rule 11 sanctions against Livingston and Plaintiffs, jointly and severally, in the three cases before us.

These appeals are dismissed in part and the orders entered on 29 October 2009 imposing Rule 11 sanctions against Livingston and Plaintiffs, jointly and severally, are vacated.

Dismissed in part and vacated in part.

Judges BRYANT and BEASLEY concur.

Report per Rule 30(e).