

Clerk of Superior Court
Recordkeeping Case Summaries
NC Supreme Court and NC Court of Appeals Published Case Summaries
Meredith Smith, UNC School of Government
January 1, 2015 – December 5, 2017

Access to court records

[Brooksby v. NC Admin Office of the Courts, COA15-1397 \(Aug. 2, 2016\)](#)

The clerk of superior court denied a request from a real estate company for all foreclosure records from 2010 to present. Subsequently, the company made a written request to the clerk to come to the clerk's office on specific dates and use the company's staff and scanning equipment to copy the documents. The clerk denied the written request and through counsel advised that the clerk did not have sufficient staff to supervise such an operation and proposed instead to provide 15 to 20 records to the company per week. In response, the company filed a complaint alleging that the clerk denied the company access to public records and violated the Public Records Act. After a mediated settlement conference, the parties agreed to obtain five records at a time and use a handheld scanner approved by the sheriff. Subsequently, the company requested 15 or more records at a time, which the clerk denied. As a result, the clerk moved for summary judgment in the underlying action and the court granted summary judgment in favor of the clerk. The company appealed. The court of appeals affirmed the decision of the trial court. The court held that the clerk did not unreasonably restrict the company's access to public records and the company failed to show that access to or copies of the public records were denied. The evidence showed only that the company was not allowed access on the explicit terms the company requested. The court found that the clerk, given the limitation of the clerk's office and the availability of employees, made reasonable accommodations to allow the company access to the documents. When examining a records request, the court noted that the clerk should balance the nature of the request against (i) the need to maintain the integrity of the records, (ii) fiscal responsibility in maintaining the records, (iii) the duty to the public, (iv) the protection of public resources, and (v) the exigency of the public's need for information.

Filed with the Clerk under Rule 58 of the NC Rules of Civil Procedure

[McKinney v. Duncan, N.C. App. \(Dec. 5, 2017\)](#)

Held: Dismissal of appeal

Facts: On July 5, 2016, the court entered two no contact orders (one for each plaintiff), neither of which were appealed. In October 2016, a consent order on a motion to show cause was entered. A second show cause proceeding was initiated and a hearing occurred on December 12, 2016. The trial judge signed orders for each plaintiff, finding the defendant was in civil contempt of the July 2016 and October 2016 orders and ordering the means by which he could purge himself of the contempt. Defendant appealed.

Rule 58 states a "judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court." Although the trial judge rendered her judgment and subsequently

reduced it to writing and signed it, “these orders do not bear a file stamp or other indication that they were ever filed with the clerk of court.” Citing *In re Thompson*, 232 N.C. App. 224 (2014), the record fails to establish the orders were entered under Rule 58. Relying on *In re Estate of Walker*, 113 N.C. 419 (1994), “a properly entered order is essential to vest the Court [of Appeals] with subject matter jurisdiction over an appeal.” The orders were not entered and the court of appeals has no jurisdiction to review them.

Summary by Sara DePasquale.

[In re Thompson, N.C. App. \(Feb. 4, 2014\)](#)

Respondent adjudicated incompetent and guardian appointed. Clerk orally announced the ruling in court on both matters and signed and dated the order as well as letters appointing guardian. Interested party filed motions challenging the incompetency and guardianship orders. Clerk denied the orders and entered sanctions against interested party. Interested party appealed. Trial court upheld the decision of the clerk. Interested party appealed to the NC Court of Appeals. NC Court of Appeals held:

- Regarding the Incompetency Order:
 - NC Rules of Civil Procedure apply to special proceedings. Under Rule 58, a judgment or order is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court.
 - The incompetency order failed to comply with Rule 58 because it lacked a stamp-file or other marking necessary to indicate a filing date and therefore was not entered. A signed and dated order is insufficient to be considered filed. An oral ruling announced in open court is not enforceable until it is entered.
 - Because the order was not entered, the appeal period did not run and therefore had not expired.
- Regarding the Guardianship Order:
 - Because the incompetency order was not entered, the clerk did not have the subject matter jurisdiction to appoint the guardian.
 - The appointment of the guardian and entry of sanctions against the appellant were without legal authority.