

IN RE LEONARD

[339 N.C. 596 (1995)]

reviewing the record, briefs and oral arguments, we now conclude that plaintiffs' petition for discretionary review was improvidently allowed.

[1] With reference to their appeal based on the dissent in the Court of Appeals, plaintiffs contend that the trial court should have allowed their motion to supplement their complaint so as to satisfy the seven-year requirement for color of title. As noted by a majority of the Court of Appeals' panel, this question was not properly before that court, since plaintiffs failed to properly give notice of their intent to appeal the denial of their motion. Accordingly, this issue is also not properly before this Court. *See Falls Sales Co. v. Board of Transp.*, 292 N.C. 437, 443, 233 S.E.2d 569, 573 (1977).

[2] Plaintiffs also contend that the trial court erred in granting summary judgment for defendants because a genuine issue of material fact existed regarding the adequacy of the description in plaintiffs' deed. However, regardless of the adequacy of the description in plaintiffs' deed, summary judgment for defendants would still be proper if the seven-year statutory period had not run at the time this action was instituted. As noted earlier, the Court of Appeals held that the seven-year statutory period under N.C.G.S. § 1-38 had not run at the time this action was instituted. There was no dissent as to this issue, and this issue is dispositive of plaintiffs' appeal. Therefore, plaintiffs' appeal is dismissed.

DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED;
APPEAL DISMISSED.

Justice ORR did not participate in the consideration or decision of this case.

IN RE: INQUIRY CONCERNING A JUDGE, NO. 182, JERRY W. LEONARD,
RESPONDENT

No. 454A94

(Filed 10 February 1995)

Judges, Justices, and Magistrates § 36 (NCI4th)—censure of district court judge—behavior resulting from alcohol use

A former district court judge is censured for conduct prejudicial to the administration of justice that brings the judicial office

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into disrepute based upon the following conduct; (1) his behavior while publicly intoxicated in Key West, Florida which resulted in his arrest and a negotiated plea of *nolo contendere* to the criminal offense of trespass after warning; (2) his behavior while publicly intoxicated in Raleigh, North Carolina which resulted in his conviction of the criminal offense of indecent exposure; and (3) his continuing refusal, even after admitting psychological dependency, to abstain from the consumption of alcohol, the use of which caused the aforementioned incidents and conduct.

Am Jur 2d, Judges § 19.**Power of court to remove or suspend judge. 53 ALR3d 882.**

This matter is before the Court upon a recommendation by the Judicial Standards Commission (Commission), filed with the Court 20 September 1994, that Judge Jerry W. Leonard, formerly a Judge of the General Court of Justice, District Court Division, Tenth Judicial District of the State of North Carolina, be censured for conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Canons 1 and 2A of the North Carolina Code of Judicial Conduct.

William N. Farrell, Jr., Senior Deputy Attorney General, Special Counsel for the Judicial Standards Commission.

Merriman, Nicholls & Crampton, P.A., by Nicholas J. Dombalis, II, for respondent.

ORDER OF CENSURE.

The conduct upon which the Commission based its recommendation that the respondent be censured included: (1) the respondent's behavior while publicly intoxicated in Key West, Florida on 28 December 1992 which resulted in his arrest and in a negotiated plea of *nolo contendere* to the criminal offense of trespass after warning; (2) the respondent's behavior while publicly intoxicated in Raleigh, North Carolina in November of 1993 which resulted in his conviction of the criminal offense of indecent exposure; and (3) the respondent's continuing refusal, even after admitting psychological dependency, to abstain from the consumption of alcohol, the use of which caused the aforementioned incidents and conduct.

In his answer, the respondent "admitted that the conduct above constitutes conduct not in conformity with the Code of Judicial Con-

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duct.” Also, the respondent acknowledges that, “such conduct was a product of the voluntary consumption of intoxicating alcohol, a willful act.” During the formal hearing before the Commission, the respondent offered evidence in the form of numerous affidavits in support of his capabilities as a jurist.

After reviewing the record in this case and the recommendation of the Commission, this Court concludes that the respondent’s conduct constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of N.C.G.S. § 7A-376. The Court approves the recommendation of the Commission that the respondent be censured.

Now, therefore, it is, pursuant to N.C.G.S. §§ 7A-376, 377, and Rule 3 of the Rules for Supreme Court Review of Recommendations of the Judicial Standards Commission, ordered that Judge Jerry W. Leonard be, and he is hereby, censured for conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Done by the Court in Conference this the 9th day of February 1995.

Orr, J
For the Court

BENNY BENTON, PLAINTIFF V. HUGH CLIFTON THOMERSON, JR., DEFENDANT AND
THIRD-PARTY PLAINTIFF V. CLAUDE E. McCLAIN, THIRD-PARTY DEFENDANT

No. 78A94

(Filed 10 February 1995)

Pleadings § 63 (NCI4th)— third-party complaint—reversal of sanctions against attorney

The Court of Appeals decision affirming the trial court’s award of Rule 11 sanctions against defendant’s attorney on the grounds that a claim for contribution alleged in a third-party complaint was not well-grounded in law or fact and was filed for