

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 25, 2015 Session

MARK EVANS v. GREEN TREE SERVICING, LLC, ET AL.

**Appeal from the Circuit Court for Smith County
No. 2014-CV-28 John D. Wootten, Jr., Judge**

No. M2014-01394-COA-R3-CV – Filed July 28, 2015

A pro se litigant brought suit in the General Sessions Court for Smith County over a dispute with a neighbor. The general sessions court dismissed the case for lack of subject matter jurisdiction. The plaintiff appealed to the Circuit Court, where his claims were once again dismissed for lack of subject matter jurisdiction. Because in this circumstance we conclude that only a chancery court had subject matter jurisdiction to hear the dispute, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

W. NEAL MCBRAYER, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

Mark Evans, Buffalo Valley, Tennessee, appellant, Pro Se.

Klint W. Alexander and V. Austin Shaver, Nashville, Tennessee, for the appellee, Greentree Servicing, LLC.

Jamie D. Winkler, Carthage, Tennessee, for the appellee, Jackie Farris.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

Mark Evans owns real property adjoining property owned by Jackie Farris. Both properties are located in Buffalo Valley, Tennessee. At some point, a dispute arose between Mr. Evans and Mr. Farris over the location of a fence. Mr. Evans alleged that Mr. Farris tore down the fence, which Mr. Evans contends was located on his property, and moved it into a drainage ditch. The drainage ditch was also allegedly located on Mr. Evans's property. As a result, Mr. Evans's driveway was "washed out."

Mr. Evans brought an action against Mr. Farris and the entity from whom he purchased his property, Green Tree Servicing, LLC, in General Sessions Court for Smith County. Mr. Evans asserted four claims: (1) breach of contract; (2) fraud; (3) criminal trespass and vandalism, Tennessee Code Annotated §§ 39-14-405 and -408 (2014); and (4) violations of the Tennessee Real Estate Broker License Act of 1973, Tennessee Code Annotated § 62-13-312(b)(1), (2), (4), and (20) (2009). The general sessions court conducted a hearing on March 27, 2014. At the conclusion of the hearing, the general sessions court found that it lacked subject matter jurisdiction to hear the case because Mr. Evans's claims involved a boundary line dispute.¹ The court advised Mr. Evans, who was proceeding pro se, that the chancery court had jurisdiction over such claims.

Rather than re-filing his claims in chancery court, Mr. Evans appealed the general sessions court's dismissal to the circuit court for de novo review. Green Tree moved to dismiss for lack of subject matter jurisdiction. Mr. Farris filed a similar motion. Green Tree and Mr. Farris both argued that Tennessee Code Annotated § 16-11-106(a) (2009)

¹ Mr. Evans's testimony at the hearing established that a boundary line dispute was at the core of each of his claims. The following exchange took place between the court and Mr. Evans at the March 27, 2014 general sessions hearing:

THE COURT: Mr. Evans, let me ask you this. The fence that's been moved, is that on the [boundary] line that's in question about what you're raising today?

MR. EVANS: There is two lines. Like I said, ten lines were actually moved.

....

THE COURT: Well, listen. The line that has this fence that was moved by whoever that ultimately resulted in your driveway being washed, is that one of the lines in question, one of those ten [lines] you're talking about?

MR. EVANS: Yes.

THE COURT: That has been adjusted not by your doing?

MR. EVANS: Correct.

....

MR. EVANS: I was just saying the damages—because [Mr. Farris] tore my fence down to put a new one up. That was him doing that. . . .

THE COURT: Well, but if, in fact, he did that—I don't know if he did or not, but if, in fact, he did that, that was based on the fact that the line has been changed or modified by one of these agreements here.

MR. EVANS: Well, I agree with that.

grants the chancery court exclusive subject matter jurisdiction over cases involving a boundary line dispute. The circuit court agreed, finding that it lacked subject matter jurisdiction to hear Mr. Evans's claims because "one or more of [Mr. Evans's] claims arise from a boundary line dispute" Mr. Evans timely appealed the circuit court's dismissal of his case.

II. ANALYSIS

A. MR. EVANS'S COMPLIANCE WITH PROCEDURAL REQUIREMENTS

Before we address the merits of this appeal, we must first address a threshold issue—whether Mr. Evans waived his arguments on appeal by failing to comply with the applicable rules. *Green Tree*² and Mr. Farris each argue that Mr. Evans's brief fails to comply with Tennessee Rule of Appellate Procedure 27 and Tennessee Court of Appeals Rule 6. In considering this argument, we are mindful that Mr. Evans is not a lawyer and that he may have little legal training or familiarity with the judicial system. A party is entitled to fair treatment by our courts when they decide to represent themselves; however, "[p]ro se litigants are not [] entitled to shift the burden of litigating their case to the courts." *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000); *see also Young v. Barrow*, 130 S.W.3d 59, 62 (Tenn. Ct. App. 2003). Furthermore, although pro se litigants are afforded a certain amount of leeway, we cannot entirely excuse them from complying with the same substantive and procedural rules imposed on represented parties. *Young*, 130 S.W.3d at 63.

Mr. Evans's brief fails to comply with both rules in numerous aspects. His brief fails to present a statement of issues presented for review. The brief makes no citations to the record or any legal authority supporting Mr. Evans's position. Mr. Evans's brief also seeks to introduce documents and evidence that are not a part of the record. Additionally, the brief contains no argument section, and it is difficult to discern what Mr. Evans's arguments are with respect to subject matter jurisdiction. However, despite these inadequacies, we may waive the briefing requirements to adjudicate the issue on the merits in our discretion. *See* Tenn. R. App. P. 2; *see also McAllister v. Rash*, No. E2014-01283-COA-R3-CV, 2015 WL 3533679, at *7 (Tenn. Ct. App. June 5, 2015); *Yarlett v. Yarlett*, No. M2014-01036-COA-R3-CV, 2015 WL 3551984, at *4 (Tenn. Ct. App. June 5, 2015). Here, given Mr. Evans's status as a pro se litigant and the basis for the

² Perhaps somewhat ironically, *Green Tree* has failed to comply with Tennessee Rule of Appellate Procedure 27 by failing to designate this argument as an issue in its statement of the issues section of its brief. *See* Tenn. R. App. P. 27(b); *Cartwright v. Jackson Capital Partners*, No. W2013-01865-COA-R3-CV, 2015 WL 2438815, at *13-14 (Tenn. Ct. App. May 21, 2015) (concluding that we may treat an issue as waived where a party fails to include it in the "Statement of Issues Presented for Review" section of their brief). However, this argument was properly included in the issues presented for review section of Mr. Farris's brief.

dismissal by the court below, we exercise our discretion to proceed to the merits of the case.

B. SUBJECT MATTER JURISDICTION

“The concept of subject matter jurisdiction implicates a court’s power to adjudicate a particular type of case or controversy.” *Benson v. Herbst*, 240 S.W.3d 235, 238-39 (Tenn. Ct. App. 2007) (citing *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004); *Toms v. Toms*, 98 S.W.3d 140, 143 (Tenn. 2003); *First Am. Trust Co. v. Franklin-Murray Dev. Co.*, 59 S.W.3d 135, 140 (Tenn. Ct. App. 2001)). Subject matter jurisdiction is derived—“either explicitly or by necessary implication”—from our Constitution or legislative acts. *Id.* at 239. “The parties cannot confer subject matter jurisdiction on a trial or an appellate court by appearance, plea, consent, silence, or waiver.” *Id.*

We must first examine the nature of the cause of action and relief sought to determine the existence of subject matter jurisdiction. *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994); *Benson*, 240 S.W.3d at 239. Next we must determine whether the Tennessee Constitution or our Legislature has granted the court power to adjudicate that kind of case. *In re S.L.M.*, 207 S.W.3d 288, 295 (Tenn. Ct. App. 2006). These determinations are questions of law subject to de novo review, with no presumption of correctness. *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000).

Based on our review of the record, Mr. Evans’s claims clearly turn on his ownership, or lack thereof, of the segment of real property in question. Therefore, the boundary line between Mr. Evans’s and Mr. Farris’s properties is a key determination to the outcome of this case. Tennessee Code Annotated § 16-11-106 grants the chancery court jurisdiction over a case in which a boundary line dispute is presented. It states, in part, “[t]he chancery court has jurisdiction to hear and determine all cases in which the boundary line or lines of adjoining or contiguous tracts of land is one, or the only, question at issue in the case.” Tenn. Code Ann. § 16-11-106(a).

Based on the language of the statute, and our Supreme Court’s statement in *Freels v. Northrup*, 678 S.W.2d 55 (Tenn. 1984), that a case involving a boundary line dispute is “peculiarly within the jurisdiction of the Chancery Court,” Green Tree and Mr. Farris argue that the chancery court has exclusive jurisdiction over such a case. *Id.* at 58. This assertion is incorrect. Tennessee Code Annotated § 16-10-111 (2009) provides:

Any suit of an equitable nature, brought in the circuit court, where objection has not been taken to the jurisdiction, may be transferred to the chancery court of the county, or heard and determined by the circuit court upon the principles of a court of equity, with power to order and take all

proper accounts, and otherwise to perform the functions of a chancery court.

Tenn. Code Ann. § 16-10-111. Where no objection is made, Tennessee Code Annotated § 16-10-111 grants our circuit courts subject matter jurisdiction over boundary line disputes. *Burks v. Gobble*, No. 01A01-9602-CV-00075, 1996 WL 465227, at *1 (Tenn. Ct. App. Aug. 16, 1996); *see also Burnette v. Pickel*, 858 S.W.2d 319, 321-22 (Tenn. Ct. App. 1993) (questioning whether it was proper for the circuit court acting sua sponte to bifurcate a case for determination of a boundary line dispute in chancery court, but refusing to address the issue because it was not objected to at trial); *Jackson v. Bownas*, No. E2004-01893-COA-R3-CV, 2005 WL 1457752 (Tenn. Ct. App. June 21, 2005) (appeal from circuit court’s determination of a boundary line).

Here, however, the circuit court could not exercise subject matter jurisdiction under Tennessee Code Annotated § 16-10-111 for two reasons. First, Green Tree and Mr. Farris consistently objected to both the general sessions and circuit court’s exercise of jurisdiction over the boundary line dispute, insisting that it must be brought in chancery court. Second, and perhaps more importantly, the circuit court was not exercising its original jurisdiction. Rather, the court was acting within its appellate jurisdiction under Tennessee Code Annotated § 16-10-112 (2009) to review the general sessions court’s decision.

When exercising its appellate authority, the circuit court may only exercise such subject matter jurisdiction as possessed by the general sessions court in the original action. *Riden v. Snider*, 832 S.W.2d 341, 342 (Tenn. Ct. App. 1991). General sessions courts have “all the powers and jurisdiction granted by the public acts and applicable private acts.” Tenn. Code Ann. § 16-15-501(c)(2) (2009). In *Riden v. Snider*, a case that is factually and procedurally similar to the case before us, we held that, although the general sessions court can hear suits in equity under Tennessee Code Annotated § 16-15-501 (2009), “the statute does not confer upon the court the extraordinary jurisdiction of a chancellor.” 832 S.W.2d at 342. By private act, the General Sessions Court for Smith County is empowered to hear some equitable disputes but not boundary line disputes. *See* 1959 Tenn. Priv. Acts 118 (Ch. 34 § 3). Therefore, the general sessions court did not have subject matter jurisdiction to hear this case, and Tennessee Code Annotated § 16-10-111 could not confer such jurisdiction on the circuit court when acting as an appellate body. *See Riden*, 832 S.W.2d at 343. The circuit court properly dismissed Mr. Evans’s complaint for lack of subject matter jurisdiction.

C. REQUEST FOR ATTORNEYS’ FEES ON APPEAL

Mr. Farris and Green Tree each contend that Mr. Evans’s appeal is frivolous and seek an award of their respective attorneys’ fees incurred on appeal under Tennessee Code Annotated § 27-1-122 (2000). The statute provides as follows:

When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

Tenn. Code Ann. § 27-1-122. The statute “must be interpreted and applied strictly so as not to discourage legitimate appeals.” *Davis v. Gulf Ins. Grp.*, 546 S.W.2d 583, 586 (Tenn. 1977) (citing Tennessee Code Annotated § 27-124, the predecessor to Tennessee Code Annotated § 27-1-122). A frivolous appeal is one “utterly devoid of merit.” *Combustion Eng’g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978). We do not find this appeal devoid of merit or any indication that it was undertaken for delay. Therefore, we decline to award Mr. Farris and Green Tree their attorneys’ fees on appeal.

III. CONCLUSION

For the foregoing reasons, the decision of the circuit court is affirmed.

W. NEAL McBRAYER, JUDGE