



Tennessee Supreme Court
DISCRETIONARY APPEALS

Grants & Denials List
July 3, 2023 - July 7, 2023

GRANTS

Style/Appeal Number	County/Trial Judge/ Trial Court No.	Intermediate Court	Supreme Court Action
<u>Jackson</u> CITY OF MEMPHIS v. GEORGE EDWARDS BY AND THROUGH ELIZABETH W. EDWARDS W2022-00087-SC-R11-CV	Shelby County Chancery Court JoeDae L. Jenkins CH-20-0267	Armstrong, Kenny W.: Reverse Stafford, J. Steven: Dissent	GRANTED AND REMANDED TO TRIAL COURT - Application of George Edwards (see order for details); Order Filed 7-5-2023

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

FILED
07/05/2023
Clerk of the
Appellate Courts

**CITY OF MEMPHIS v. GEORGE EDWARDS BY AND THROUGH
ELIZABETH W. EDWARDS**

**Chancery Court for Shelby County
No. CH-20-0267**

No. W2022-00087-SC-R11-CV

ORDER

The City of Memphis (the “City”) denied the claim of its employee, firefighter George Edwards, for benefits under the City’s On-the-Job Injury Plan and its Heart, Hypertension, and Lung Program in 2010, and again in 2011. Mr. Edwards appealed the 2011 denial to the Administrative Law Judge (the “ALJ”). Mr. Edwards subsequently retired in 2012 and died during the pendency of the administrative proceedings. His wife, Elizabeth W. Edwards, was substituted as his surviving spouse. The ALJ held a hearing in August 2017, and, in October 2017, entered an order concluding that the City had wrongly denied Mr. Edwards’s claim for benefits. The ALJ entered a final judgment in October 2019.

The City filed a petition for judicial review in the Chancery Court for Shelby County in February 2020. After a series of motions and orders, the City ultimately failed to file a complete record of the administrative proceedings. As a result, by order filed December 21, 2021, the trial court granted Mrs. Edwards’s motion to dismiss the City’s petition for judicial review for failure to file the administrative record. The City appealed. In its brief on appeal, the City did not raise as an issue the trial court’s dismissal on the basis of the City’s failure to file a complete administrative record. The City also did not substantively address the trial court’s dismissal on that basis. By contrast, Mrs. Edwards set out in her response brief the following single issue: “Whether the Chancery Court committed error by dismissing Appellant’s Petition for Judicial Review of an administrative decision upon the Appellant’s failure to file the administrative record,” and she discussed this issue at length. She additionally argued that the City waived this issue by failing to raise or address it. The City did not file a reply brief to address this issue or the question of waiver.

The Court of Appeals reversed, with Judge J. Steven Stafford dissenting. *City of Memphis v. George Edwards by and through Elizabeth W. Edwards*, No. W2022-00087-COA-R3-CV, 2023 WL 2159244 (Tenn. Ct. App. Feb. 22, 2023). The majority of the

court readily acknowledged that the question the court was required to address and resolve was whether the trial court erred in dismissing the City’s petition for review of the ALJ’s ruling on the ground that the trial court’s review was precluded by an incomplete administrative record. The majority further acknowledged that the City’s statement of the issues did not “encapsulate” the gravamen of the appeal. *Id.* at *4. And, the majority also acknowledged the deficiency in the City’s briefing resulting from its misstatement of the issue before the court. The majority generously characterized the City’s argument on this critical issue as “skeletal.” *Id.* at *5. Even in light of these facts, the majority of the court decided to exercise its discretion under Rule 2 of the Tennessee Rules of Appellate Procedure in order to reach this dispositive issue.¹ It did so even though it acknowledged this is not the court’s usual practice and even though the City never requested relief under Rule 2 or offered evidence of the “good cause” required under the Rule.² Respectfully, in addressing this issue, the majority effectively assumed the role of advocate and crafted the City’s argument for it. Mrs. Edwards was not afforded an opportunity to respond to the argument crafted by the majority.

This Court previously has made clear that, to be properly raised on appeal, an issue must be presented in the manner prescribed by Rule 27 of the Tennessee Rules of Appellate Procedure. *Hodge v. Craig*, 382 S.W.3d 325, 334 (Tenn. 2012). As this Court explained in *Hodge*, “[r]ather than searching for hidden questions, appellate courts prefer to know immediately what questions they are supposed to answer” and, consequently, “[a]ppellate review is generally limited to the issues that have been presented for review.” *Id.* This Court further explained in *Hodge* that an issue may be deemed waived when it is argued in the brief but is not designated as an issue in accordance with Rule 27(a)(4). It also may be deemed waived when it has been expressly raised as an issue, but the brief fails to include an argument satisfying the requirements of Rule 27(a)(7). *Id.* at 335. The City failed in both respects in its brief in the Court of Appeals. These requirements are not matters of mere formality. “Enforcing these requirements enables appellate courts to be ‘more confident in the results of their deliberations’ because ‘they have heard the issues argued by attorneys [who] are duty-bound to fully develop their opposing positions.’” *State v. Bishop*, 431 S.W.3d 22, 43 (Tenn. 2014) (alteration in original) (quoting *State v. Northern*,

1 The majority did “strongly caution” the City about any future failures to comply with Rule 27 of the Tennessee Rules of Appellate Procedure and Rule 6 of the Rules of the Court of Appeals. *Edwards*, 2023 WL 2159244, at *5.

2 Rule 2 of the Tennessee Rules of Appellate Procedure provides that, with certain exceptions, the requirements of the Rules of Appellate Procedure may be suspended when “good cause” exists for doing so. Tenn. R. App. P. 2. As Judge Stafford noted in his dissent, the Court of Appeals often chooses to address issues that have failed to meet the appellate briefing requirements when “the appellant is self-represented, [the court’s] ability to address the sole issue appealed is not hindered by the deficiencies, or the gravity of the issues is such that resolution is necessary.” *Edwards*, 2023 WL 2159244, at *11 (Stafford, J., dissenting). The majority in this case, however, did not articulate any such good cause.

262 S.W.3d 741, 766 (Tenn. 2008) (Holder, J., concurring in part and dissenting in part)). In addition, enforcing these requirements helps preserve fairness and integrity in the court system. As Judge Stafford remarked in his dissent, “while the law remains flexible, it is important that our decisions be viewed as consistent and predictable, as this ‘contributes to the actual and perceived integrity of the judicial process.’” *Edwards*, 2023 WL 2159244, at *10 (Stafford, J., dissenting) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827–28 (1991)). Declining to address questions not properly raised is a “way that we achieve fairness and ensure the perceived integrity of the courts.” *Id.*

Like this Court, the Court of Appeals repeatedly has recognized the importance of properly raising an issue on appeal and the consequence of a failure to comply with the requirements of Rule 27. Indeed, in a recent opinion including two members of the panel in this case, the Court of Appeals similarly emphasized the importance of compliance with Rule 27 and found a waiver of the issue due to non-compliance:

The contents of appellate briefs are governed by Rule 27 of the Tennessee Rules of Appellate Procedure, which requires an appellant's brief to list “[a] statement of the issues presented for review” Tenn. R. App. P. 27(a)(4). The statement of the issues is vitally important to the appeal as it provides this Court with the questions that we are asked to answer on review. The statement is also significant because our “[a]ppellate review is generally limited” to those issues listed in it. *Hodge v. Craig*, 382 S.W.3d 325, 334 (Tenn. 2012) (citing Tenn. R. App. P. 13(b)). Indeed, “[c]ourts have consistently held that ... [a]n issue not included [in the statement of the issues] is not properly before the Court of Appeals.” *Hawkins v. Hart*, 86 S.W.3d 522, 531 (Tenn. Ct. App. 2001). Accordingly, appellants should endeavor to frame each issue “as specifically as the nature of the error will permit,” *Hodge*, 382 S.W.3d at 335 (citing *Fahey v. Eldridge*, 46 S.W.3d 138, 143–44 (Tenn. 2001); *State v. Williams*, 914 S.W.2d 940, 948 (Tenn. Crim. App. 1995)), as this Court is not required to “search[] for hidden questions” in appellants’ briefs. *Hodge*, 382 S.W.3d at 334 (citing Bryan A. Garner, *Garner on Language and Writing* 115 (2009); Robert L. Stern, *Appellate Practice in the United States* § 10.9, at 263 (2d ed. 1989)). Having failed to include as an issue whether the trial court erred when it granted the DSW Trust #2's motion to dismiss before fully considering Wife's motion for leave to amend the complaint, Wife has waived this issue.

Waddell v. Waddell, No. W2020-00220-COA-R3-CV, 2023 WL 2485667, at *9, n. 8 (Tenn. Ct. App. Mar. 14, 2023) (alterations in original).

We find no sufficient explanation for the majority’s contrary determination in this

appeal.³ Rather, we agree wholeheartedly with Judge Stafford's assessment in his dissenting opinion:

In sum, this case involves an institutional party well-represented by counsel that chose on appeal to avoid significant discussion of a dispositive issue. But my colleagues are not content for the City to be felled by the consequences of its own actions. Instead, they choose to address the threshold issue that they admit was inadequately briefed, citing cases both employed by the trial court in its ruling and newly uncovered. *Cf. generally State v. Bristol*, 654 S.W.3d 917, 927 (Tenn. 2022) (discussing the requirement that a party be given notice and an opportunity to respond when the appellate court considered an unpreserved and unrepresented issue). However, decades of caselaw and the very foundations of our adversarial justice system dictate that courts cannot and should not shoulder the burden of fashioning the arguments of the parties who have chosen not to do so for themselves. In the absence of good cause to excuse the City's failures, either demonstrated by the City directly or otherwise evident from the record, I believe that these precedents demand that we treat the City as we have done countless other parties and waive consideration of whether the trial court properly dismissed the City's petition for judicial review.

Edwards, 2023 WL 2159244, at *12 (Stafford, J., dissenting) (footnote omitted).

Under these circumstances, this Court finds the majority's decision to address the dispositive issue in this appeal is irreconcilable with this Court's precedent and constitutes a clear abuse of the intermediate appellate court's discretion. Accordingly, upon consideration of the application for permission to appeal of George Edwards by and through Elizabeth W. Edwards, and the record before us, the application is granted, the judgment of the Court of Appeals is vacated, and the judgment of the trial court dismissing the petition for review of the City of Memphis is reinstated.

PER CURIAM

³ We recognize that in this appeal, Mrs. Edwards, the appellee, correctly stated the issue and presented an argument addressing it in her response brief. However, she also argued that the City had waived the issue, and the City failed to file a reply brief to address either the issue or the waiver argument. In addition, the majority of the Court of Appeals based its decision largely on case law the court itself unearthed in its own research, affording Mrs. Edwards no opportunity to respond to or address that case law or the argument crafted by the majority. In this regard, the majority acted contrary to the clear instruction of our recent decision in *State v. Bristol*, 654 S.W.3d 917, 927 (Tenn. 2022).