

FILED

12/04/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 1, 2023

LEWANA CASTILLO WEBB v. GREGORY RYAN WEBB

Appeal from the Circuit Court for Cumberland County
No. CCI-2022-CV-6875 **Caroline E. Knight, Judge**

No. E2023-00378-COA-R3-CV

This case involves the respondent's *pro se* appeal from an order of protection granted by the trial court in favor of the petitioner. The petitioner initially obtained an order of protection for one year from the general sessions court, which the respondent appealed to the circuit court. After a *de novo* hearing, the trial court extended the order of protection for three years, to expire on January 24, 2026. The respondent timely appealed to this Court. Because the respondent's appellate brief does not comply with Tennessee Rule of Appellate Procedure 27 and Tennessee Court of Appeals Rule 6, we hereby dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ARNOLD B. GOLDIN, J., joined.

Gregory Ryan Webb, Pro Se.

Kevin R. Bryant, Crossville, Tennessee, for the appellee, Lewana Castillo Webb.

MEMORANDUM OPINION¹

¹ Tennessee Court of Appeals Rule 10 provides as follows:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

I. Factual and Procedural Background

On October 7, 2021, the petitioner, Lewana Webb (“Petitioner”), petitioned for and was granted an *ex parte* temporary order of protection by the Cumberland County General Sessions Court (“general sessions court”) barring the respondent, Gregory Webb (“Respondent”), from contacting Petitioner and the parties’ minor son. Following a hearing on the petition conducted on April 21, 2022, the general sessions court extended the order of protection for one year. Respondent appealed the ruling extending the order of protection, and a *de novo* hearing was set to be heard by the Cumberland County Circuit Court (“trial court”) on January 24, 2023. Prior to the hearing, Petitioner filed two motions to amend the order of protection to reflect Respondent’s then-pending charges for domestic violence and certain statements he had made regarding the parties’ minor child. Respondent failed to appear for the January 24, 2023 hearing, and the trial court accordingly dismissed his appeal.

The trial court subsequently entered two orders, dated January 24, 2023, and February 28, 2023, respectively granting Petitioner’s motions to amend and extending the order of protection for three years, to expire on January 24, 2026. The trial court also ordered Respondent to pay Petitioner’s attorney’s fees. Respondent timely appealed to this Court. On September 6, 2023, Petitioner filed a motion to dismiss this appeal on grounds that Respondent’s appellate brief does not comport with the requirements of Tennessee Rule of Appellate Procedure 27.

II. Failure to Comply with Tennessee Rule of Appellate Procedure 27 and Tennessee Court of Appeals Rule 6

As a threshold matter, we address Petitioner’s motion to dismiss, which is predicated on Respondent’s failure to comply with the Tennessee Rules of Appellate Procedure and the rules of this Court. Respondent has filed an appellate brief that does not include a proper table of authorities, statement of the case, statement of the facts, or argument section. Moreover, his brief fails to include any applicable standard of review or citations to the record or legal authority. We have conducted a thorough review of Respondent’s brief and hereby determine that the brief fails to comply with Tennessee Rule of Appellate Procedure 27 and Tennessee Court of Appeals Rule 6.

We recognize that Respondent is a *pro se* litigant and respect his decision to proceed self-represented. With regard to self-represented litigants, this Court has explained:

Pro se litigants who invoke the complex and sometimes technical procedures of the courts assume a very heavy burden. Conducting a trial with a *pro se* litigant who is unschooled in the intricacies of evidence and trial practice can be difficult. Nonetheless, trial courts are expected to appreciate and be understanding of the difficulties encountered by a party

who is embarking into the maze of the judicial process with no experience or formal training.

Irvin v. City of Clarksville, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988) (internal citations omitted). Parties proceeding without benefit of counsel are “entitled to fair and equal treatment by the courts,” but we “must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe.” *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003). This Court must “be mindful of the boundary between fairness to a pro se litigant and unfairness to the *pro se* litigant’s adversary.” *Id.* Furthermore, “[p]ro se litigants are not . . . entitled to shift the burden of litigating their case to the courts.” *See Chiozza v. Chiozza*, 315 S.W.3d 482, 487 (Tenn. Ct. App. 2009), *perm. app. denied* (Tenn. May 20, 2010) (quoting *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000)).

Tennessee Rule of Appellate Procedure 27 succinctly and clearly outlines those elements required for a brief on appeal:

(a) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

- (1) A table of contents, with references to the pages in the brief;
- (2) A table of authorities, including cases (alphabetically arranged), statutes and other authorities cited, with references to the pages in the brief where they are cited;

* * *

- (4) A statement of the issues presented for review;
- (5) A statement of the case, indicating briefly the nature of the case, the course of proceedings, and its disposition in the court below;
- (6) A statement of facts, setting forth the facts relevant to the issues presented for review with appropriate references to the record;
- (7) An argument, which may be preceded by a summary of argument, setting forth:

(A) the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief,

with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues)

(8) A short conclusion, stating the precise relief sought.

Similarly, Tennessee Court of Appeals Rule 6 provides in pertinent part:

- (a) Written argument in regard to each issue on appeal shall contain:
- (1) A statement by the appellant of the alleged erroneous action of the trial court which raises the issue and a statement by the appellee of any action of the trial court which is relied upon to correct the alleged error, with citation to the record where the erroneous or corrective action is recorded.
 - (2) A statement showing how such alleged error was seasonably called to the attention of the trial judge with citation to that part of the record where appellant's challenge of the alleged error is recorded.
 - (3) A statement reciting wherein appellant was prejudiced by such alleged error, with citations to the record showing where the resultant prejudice is recorded.
 - (4) A statement of each determinative fact relied upon with citation to the record where evidence of each such fact may be found.
- (b) No complaint of or reliance upon action by the trial court will be considered on appeal unless the argument contains a specific reference to the page or pages of the record where such action is recorded. No assertion of fact will be considered on appeal unless the argument contains a reference to the page or pages of the record where evidence of such fact is recorded.

Taking into account and respecting Respondent's *pro se* status, we still must conclude that his appellate brief contains significant deficiencies with regard to the above-

listed requirements. Although Respondent’s appellate brief includes sections entitled, “table of authorities,” “statement of the case,” “statement of the facts,” and “argument,” each of these sections is deficient and fails to comport with Rule 27. The “table of authorities” section of the brief does not include any relevant citations to authority; instead, it discusses generally the concept of “gaslighting” for several paragraphs. *See* Tenn. R. App. P. 27(a)(2). The “statement of the facts” section does not comport with Rule 27 or the rules of this Court because it fails to make any references to the record in support of the facts alleged. *See* Tenn. R. App. P. 27(a)(6); Tenn. Ct. App. R. 6. Additionally, although Respondent lists four issues on appeal, he fails to cite to the record or to cite any relevant legal authority in support of his arguments. *See* Tenn. R. App. P. 27(a)(7); Tenn. Ct. App. R. 6.

As this Court has previously explained with regard to proper citations to the record and to legal authority in an appellate brief:

Our Courts have “routinely held that the failure to make appropriate references to the record and to cite relevant authority in the argument section of the brief as described by Rule 27(a)(7) constitutes a waiver of the issue[s] [raised].” *Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000). In *Bean*, we went on to hold that “an issue is waived where it is simply raised without any argument regarding its merits.” *Id.* at 56; *see also Newcomb v. Kohler Co.*, 222 S.W.3d 368, 401 (Tenn. Ct. App. 2006) (holding that the failure of a party to cite to any authority or to construct an argument regarding his or her position on appeal constitutes waiver of that issue). As we stated in *Newcomb*, a “skeletal argument that is really nothing more than an assertion will not properly preserve a claim.” *Newcomb*, 222 S.W.3d at 400. It is not the function of this Court to verify unsupported allegations in a party’s brief or to research and construct the party’s argument. *Bean*, 40 S.W.3d at 56.

Chiozza v. Chiozza, 315 S.W.3d 482, 489 (Tenn. Ct. App. 2009).

In the instant case, the deficiencies within Respondent’s brief are sufficiently significant such that it is impossible for this Court to discern upon what relevant facts and legal basis the arguments therein are made in order to conduct a meaningful review. As this Court determined in *Murray v. Miracle*, 457 S.W.3d 399, 402 (Tenn. Ct. App. 2014):

We are not unmindful of Plaintiffs’ pro se status and have attempted to give them the benefit of the doubt whenever possible. Nevertheless . . . we will not dig through the record in an attempt to discover arguments or issues that Plaintiffs may have made had they been represented by counsel. To do so would place Defendants in a distinct and likely insurmountable and unfair disadvantage as this Court would be acting as Plaintiffs’ attorney.

Similarly, we cannot unfairly disadvantage Petitioner in this matter by digging through the record to verify Respondent's assertions in his brief because this would be tantamount to serving as Respondent's attorney. *See id.*

Moreover, this Court has previously explained that it is "under no duty to verify unsupported allegations in a party's brief, or for that matter consider issues raised but not argued in the brief." *Bean v. Bean*, 40 S.W.3d 52, 56 (Tenn. Ct. App. 2000). Our Supreme Court has instructed:

It is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.

Sneed v. Bd. of Pro. Resp. of Sup. Ct., 301 S.W.3d 603, 615 (Tenn. 2010). Although we may suspend the requirements of Rule 27 for "good cause," "the Supreme Court has held that it will not find this Court in error for not considering a case on its merits where the plaintiff did not comply with the rules of this Court." *Bean*, 40 S.W.3d at 54-55. Therefore, Respondent's issues presented on appeal are deemed waived. *See id.*

Subsequent to the filing of Petitioner's motion to dismiss, Respondent has filed several petitions, notices, exhibits, motions, and other filings and documents with this Court. After a thorough review of each of these filings, and in light of the fact that this appeal is being dismissed for failure to comply with Tennessee Rule of Appellate Procedure 27 and Tennessee Court of Appeals Rule 6, all of the pending filings are hereby denied as moot.

III. Conclusion

For the reasons stated above, all issues raised by Mr. Webb are deemed waived for failure to comply with the Tennessee Rules of Appellate Procedure and the Tennessee Court of Appeals Rules, and the appeal in this matter is accordingly dismissed. Therefore, all petitions, notices, requests and other filings in this appeal, to the extent that they seek any action or resolution by this Court, are pretermitted as moot. This case is remanded to the trial court for enforcement of the trial court's judgment and collection of costs assessed below. Costs on appeal are assessed to the appellant, Gregory Ryan Webb.

s/Thomas R. Frierson, II

THOMAS R. FRIERSON, II, JUDGE