

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs May 2, 2022

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STEVEN SIMMONS v. MAYOR JIM STRICKLAND, ET AL.

**Appeal from the Circuit Court for Shelby County
No. CT-2894-19 Robert S. Weiss, Judge**

No. W2020-01562-COA-R3-CV

In this appeal from the trial court’s dismissal of a complaint pursuant to Tennessee Rule of Civil Procedure 12.02 on the defenses of lack of jurisdiction over the person, insufficiency of process, and insufficiency of service of process, we affirm the trial court. We also conclude the appeal is frivolous and remand for an assessment of damages.

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

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and CARMA DENNIS MCGEE, J., joined.

Steven Simmons, Memphis, Tennessee, pro se.

Brandy S. Parrish and Allan J. Wade, Memphis, Tennessee, for the appellees, Mayor Jim Strickland, Melanie Neal, Sherman Greer, Frank Colvett, Jr., Patrice Robinson, Jamita Swearingen, Worth Morgan, Gerre Currie, Berlin Boyd, Joe Brown, Cheyenne Johnson, Martavius Jones, Kemp Conrad, J. Ford Canale, and Reid Hedgepeth.

OPINION

I. BACKGROUND

On July 1, 2019, the appellant Steven Simmons (“Plaintiff”) filed in the trial court a complaint in which the style of the case named the appellees “Mayor Strickland City of Memphis,” “Melanie Neal Administrator Code Enforcement,” and each member of the Memphis City Council: Sherman Greer, Frank Colvett, Jr., Patrice Robinson, Jamita Swearingen, Worth Morgan, Gerre Currie, Berlin Boyd, Joe Brown, Cheyenne Johnson, Martavius Jones, Kemp Conrad, J. Ford Canale, and Reid Hedgepeth (collectively

“Defendants”). The complaint’s allegations neither identify the parties nor indicate whether the individuals listed in the style of the case are sued in their individual or official capacities. Plaintiff’s complaint does not allege anything against Defendants Neal, Greer, Colvett, Robinson, Swearngen, Morgan, Currie, Boyd, Brown, Johnson, Jones, Conrad, Canale, Hedgepeth, or the Memphis City Council as a body. In narrative format, the complaint references Plaintiff’s prior lawsuit which was settled against the City of Memphis.¹

At the time the complaint was filed, Plaintiff did not submit any summonses to the Clerk of the trial court for issuance, nor did the Clerk promptly issue the required summonses as set forth in Tennessee Rule of Civil Procedure 4.01. *See* Tenn. R. Civ. P. 4.04 (“The plaintiff shall furnish the person making the service with such copies of the summons and complaint as are necessary.”). Instead, Plaintiff filed numerous motions for default judgment against Defendants. Defendants later responded in opposition to the motions for default judgment. On August 30, 2019, counsel for Defendants entered a notice of appearance and expressly preserved all defenses on their behalf. On September 16, 2019, Defendants moved to dismiss the complaint based on lack of jurisdiction over the person, insufficiency of process, and insufficiency of service of process. Among other things, Defendants argued that service of process was not sufficient under Tennessee Rule of Civil Procedure 12.02(5) due to Plaintiff’s failure to issue and serve summons on any defendant.

On October 9, 2019, more than ninety days after the complaint was filed, Plaintiff caused summons to be issued for all Defendants except Defendant Swearngen and attempted service of process through certified mail. On October 11 and 15, 2019, Plaintiff filed copies of the summonses and attached the certified mail return receipts for Defendants Mayor Strickland, Canale, Colvett, Brown, Greer, Jones, Boyd, Currie, Robinson, Morgan, Hedgepeth, and Johnson. Plaintiff also filed a copy of the summonses for Defendants Neal and Conrad but did not attach a certified mail return receipt. An electronic receipt indicating that a package was delivered to an unnamed person at an unidentified address on October 10 and 11, 2019, was attached to the summonses for Defendants Neal and Conrad filed by Plaintiff. No summons was issued for Defendant Swearngen until December 12, 2019, and the summons for Defendant Swearngen indicated that service would be made through certified mail. There was no postal service receipt attached to the filed copy of the summons issued to Defendant Swearngen.

Plaintiff responded in opposition to Defendants’ motion to dismiss. In his response, Plaintiff mostly referenced the prior lawsuit, but stated that “service of process has been perfected.” Meanwhile, he continued to file motions to which Defendants responded,

¹ Plaintiff attached to his complaint a copy of a \$210,000.00 settlement check issued in 2016 by the City of Memphis in the matter of *Stephen [sic] Simmons and Vivian Simmons v. City of Memphis*.

including another motion for default judgment which the trial court denied.

On December 31, 2019, Defendants filed a reply to supplement their motion to dismiss in which they detailed the deficiencies in Plaintiff's attempts at service of process through certified mail. Defendants also filed the affidavits of Defendant Neal and the individuals Devon Thompson and Patricia Lewis to establish that Plaintiff's attempts at service were unsuccessful because, in each instance, the summons through certified mail was delivered to persons who were not authorized to accept service of process for any of the Defendants.²

According to Defendant Neal's affidavit, the certified mailing containing the summons was not delivered to her personally by the postal service nor did she sign any receipt for delivery of the summons. Defendant Neal stated that although it appears the summons was delivered to her office address, she has not authorized any person to accept service of process on her behalf.

According to Devon Thompson's affidavit, on October 10, 2019, she signed the certified mail return receipts for Defendants Brown, Jones, Canale, Greer, Boyd, Currie, Robinson, Morgan, Hedgepeth, Johnson, and Colvett. Ms. Thompson stated that she is an administrative assistant for the Memphis City Council and her duties include providing back-up to the executive assistant assigned to the front desk of the Council office. In her affidavit, Ms. Thompson also stated that: she has not been authorized to accept service of process for the Memphis City Council or any of the individual Council members; at the time she signed for the certified mail from Plaintiff, she was unaware that it contained summonses for service of process; she was merely performing clerical duties; later her supervisor instructed her to open the certified mail; and the certified mail to Defendants Brown, Jones, Canale, Greer, Boyd, Currie, Robinson, Morgan, Hedgepeth, Johnson, and Colvett contained a summons only, but no copy of the related complaint.

Patricia Lewis is the executive assistant to the office of the Mayor of the City of Memphis. According to her affidavit regarding the certified mail return receipt filed with the summons to Defendant Mayor Strickland, the return receipt was signed by Jasmine Baker. Ms. Baker is employed as a Customer Service Administrative Specialist in the Office of Community Affairs for the City of Memphis, but also provides back-up to Ms. Lewis during Ms. Lewis's lunch break. Ms. Baker's job duties do not include accepting service of process on behalf of any employee or officer of the City of Memphis. Neither Ms. Lewis nor Ms. Baker have been authorized to accept service of process for Mayor Strickland or for the City of Memphis.

² The certified mail return receipts contain a box for "agent" and a box for "addressee" next to the signature line. It is apparent on the face of the return receipts that the "addressee" did not sign any of the receipts; however, the "agent" box was not checked by the signer for any of the return receipts.

On January 10, 2020, the trial court heard Defendants’ motion to dismiss the complaint.³ The trial court announced its ruling granting the motion to dismiss from the bench. Following the ruling, Plaintiff continued to file various motions. By order entered August 28, 2020, the trial court held that Plaintiff failed to obtain proper service of process on any Defendant; that his attempts to serve the summonses through certified mail did not comply with Tennessee Rule of Civil Procedure 4.03(2) or 4.04(10); that none of Plaintiff’s mailings were signed by a Defendant or by someone authorized to accept service of process on his or her behalf; and that Plaintiff “demonstrated an unwillingness to issue alias summonses and attempt to properly serve Defendants.” Accordingly, the trial court granted Defendants’ motion to dismiss based on lack of jurisdiction over the person, insufficiency of process, and insufficiency of service of process. Tenn. R. Civ. P. 12.02(2), (4), and (5).

Plaintiff moved to “Vacate Void Judgment” arguing, among other things, that “no judge has the power to determine whether he has jurisdiction” and that the trial court lacked the “authority to request that a hot dog be brought to the court for tasting.” Defendants responded. The trial court treated Plaintiff’s motion as one to alter or amend the judgment under Tennessee Rule of Civil Procedure 59.04 and, following a hearing, denied the motion by order entered November 19, 2020. Plaintiff appealed.

II. ISSUES

Plaintiff’s stated issues do not reference any action of the trial court or the order appealed from. We have determined that the issue is: (1) Whether the trial court erred in dismissing the complaint pursuant to Tennessee Rule of Civil Procedure 12.02. In the posture of appellees, Defendants raise the following issues: (2) Whether the appeal should be dismissed based on Plaintiff’s failure to comply with Tennessee Rule of Appellate Procedure 27 and Rule 6 of the Rules of the Court of Appeals of Tennessee; and (3) Whether Defendants should be awarded attorney fees pursuant to Tennessee Code Annotated section 27-1-122. We will address the second issue first.

III. STANDARD OF REVIEW

Here, the trial court dismissed the complaint pursuant to Tennessee Rule of Civil Procedure 12.02 based on the defenses of lack of jurisdiction over the person, insufficiency of process, and insufficiency of service of process.

“A trial court’s decision regarding the validity of personal jurisdiction over a

³ The record does not contain a transcript of this hearing.

defendant presents a question of law. We therefore conduct a de novo review of the trial court’s decision with no presumption of correctness.” *Crouch Ry. Consulting, LLC v. LS Energy Fabrication, LLC*, 610 S.W.3d 460, 471 (Tenn. 2020) (citations omitted). Likewise, we review a trial court’s dismissal of a complaint based on insufficient process, Tenn. R. Civ. P. 12.02(4), and insufficient service of process, Tenn. R. Civ. P. 12.02(5), de novo with no presumption of correctness. *See Meersman v. Regions Morgan Keegan Tr.*, No. M2017-02043-COA-R3-CV, 2018 WL 4896660, at *3 (Tenn. Ct. App. Oct. 9, 2018).

IV. DISCUSSION

Whether the Appeal Should Be Dismissed

At the outset, we must address Defendants’ raised issue wherein they request this Court to dismiss the appeal. Defendants argue that the appeal should be dismissed based on Plaintiff’s “significant departure from the mandatory provisions of Rule 27(a) of the Tennessee Rules of Appellate Procedure and Rule 6 of the Rules of the Court of Appeals of Tennessee.” Tennessee Rule of Appellate Procedure 27 instructs that the appellant’s brief “shall contain:”

- (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.

Tenn. R. App. P. 27(a). Additionally, Rule 6 of the Tennessee Court of Appeals states in part:

(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.

Tenn. Ct. App. R. 6(b).

We agree with Defendants that Plaintiff's appellate brief is quite deficient. Although portions of the brief contain an appropriate label, the substance of the brief's numbered pages is irrelevant to the issue decided by the trial court. For instance, the brief includes a section labeled "Statement of Issues on Appeal," but the issues do not correspond to any issue the trial court decided. Likewise, the brief contains a "Statement of the Case" which bears no resemblance to a statement regarding the nature of the case, the course of proceedings, and its disposition in the court below. The "Brief and Argument" section merely contains allegations copied from Plaintiff's complaint without any citation to the record. The "Conclusion" seeks original relief as opposed to appellate relief. Plaintiff includes in the brief his own affidavit dated December 19, 2020, after this appeal was filed. The affidavit was not filed in the trial court and is not part of the trial court record, so we cannot consider it. *See* Tenn. R. App. P. 13(c) (This Court "may consider those facts established by the evidence in the trial court and set forth in the record and any additional facts that may be judicially noticed or are considered pursuant to Rule 14."). Among other deficiencies, Plaintiff's brief contains no references or citations to the record on appeal, no facts relevant to the issue decided by the trial court, and no legal argument or citations to authority on the issue decided by the trial court. Indeed, Plaintiff's brief makes but a passing reference to the service of process issue.

Generally, we only consider the issues that are properly raised, argued, and supported with relevant authority. *See Hawkins v. Hart*, 86 S.W.3d 522, 531 (Tenn. Ct. App. 2001) ("[F]or an issue to be considered on appeal, a party must, in his brief, develop the theories or contain authority to support the averred position"); *see also* Tenn. R. App. P. 13(b) ("Review generally will extend only to those issues presented for review."). We agree with Defendants that Plaintiff has failed to comply with Tennessee Rule of Appellate Procedure 27(a) and Rule 6 of the Rules of the Court of Appeals. Ordinarily, "failure to comply with the Rules of Appellate Procedure and the Rules of this Court" constitutes a waiver of the issues raised by the appellant. *Bean v. Bean*, 40 S.W.3d 52, 55

(Tenn. Ct. App. 2000).

We believe that the aforementioned shortcomings in the brief are due, in part, to Plaintiff's status as a pro se litigant. This court "must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe." *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003) (citing *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996)). It is well-settled that "[w]hile a party who chooses to represent himself or herself is entitled to the fair and equal treatment of the courts, [p]ro se litigants are not . . . entitled to shift the burden of litigating their case[s] to the courts." *Chiozza v. Chiozza*, 315 S.W.3d 482, 487 (Tenn. Ct. App. 2009) (internal citations omitted). However, "[t]he courts give pro se litigants who are untrained in the law a certain amount of leeway in drafting their pleadings and briefs." *Young*, 130 S.W.3d at 63. Although this appeal is subject to dismissal due to Plaintiff's significantly deficient brief, we nonetheless exercise our discretion to consider the merits of this case by reviewing the trial court's dismissal of the complaint. See Tenn. R. App. P. 2 (allowing this Court to suspend the Tennessee Rules of Appellate Procedure "[f]or good cause"). We find good cause to do so in this instance because, despite its shortcomings, Plaintiff's brief does not impede our ability to discern and address the dispositive issue in this appeal. We caution litigants that our decision to entertain this appeal on the merits does not mean that we will be as lenient in the future.

Dismissal of the Complaint Pursuant to Tennessee Rule of Civil Procedure 12.02

A civil lawsuit begins with the filing of a complaint in a court of competent jurisdiction. Tenn. R. Civ. P. 3. That is only the first step. The person filing the lawsuit must also serve a copy of the complaint and a summons on each defendant, and the procedure for doing so is set forth in Tennessee Rule of Civil Procedure 4. Rule 4 concerns "process" which is the legal means by which an individual or entity is required to appear in court or a defendant is given notice of a legal action against them. See, e.g., *Lewis v. Bowen*, No. M2003-00985-COA-R3-CV, 2004 WL 2752811, at *3 (Tenn. Ct. App. Dec. 1, 2004) ("Process . . . is the document, usually a summons, that brings the defendant before the court, asserts the court's jurisdiction over the case, and requires the defendant to respond."). Any litigant, whether represented by an attorney or not, "must comply with the requirements of Tenn. R. Civ. P. 3 and 4 regarding the filing of the complaint and the issuance of process." *Hodges v. Att'y Gen.*, 43 S.W.3d 918, 921 (Tenn. Ct. App. 2000). If these requirements are not met, then a defendant can ask the court to dismiss the complaint because the Tennessee Rules of Civil Procedure allow dismissal of all or part of a complaint based upon the defenses of lack of jurisdiction over the person, insufficiency of process, and insufficiency of service of process. Tenn. R. Civ. P. 12.02(2), 12.02(4) and 12.02(5); *McNeary v. Baptist Mem'l Hosp.*, 360 S.W.3d 429, 436 (Tenn. Ct. App. 2011). "A court acquires personal jurisdiction over a defendant when the defendant is served with process." *McNeary*, 360 S.W.3d at 436 (citing *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977)).

Here, the trial court dismissed Plaintiff's complaint because the court found that Plaintiff did not follow the requirements in the Tennessee Rules of Civil Procedure when attempting to serve the Defendants with process through certified mail. We turn now to those Rules and the caselaw interpreting them. Rule 4.03(2) provides, in pertinent part, as follows:

When process is served by mail, the original summons, endorsed as below; an affidavit of the person making service setting forth the person's compliance with the requirements of this rule; and, the return receipt shall be sent to and filed by the clerk. The person making service shall endorse over his or her signature on the original summons the date of mailing a certified copy of the summons and a copy of the complaint to the defendant and the date of receipt of return receipt from the defendant. If the return receipt is signed by the defendant, or by person designated by Rule 4.04 or by statute, service on the defendant shall be complete. If not, service by mail may be attempted again or other methods authorized by these rules or by statute may be used.

Tenn. R. Civ. P. 4.03(2) (emphasis added). "Return of service is a written account of the actions taken by the person making service to show to whom and how the service was made, or the reason service was not made." 3 Nancy Fraas MacLean, *Tennessee Practice Series—Rules of Civil Procedure Annotated* § 4:15 (4th ed. 2008). "The language of Rule 4.03 'set[s] forth a mandatory requirement rather than a discretionary ideal that need not be strictly enforced to confer jurisdiction over a party.'" *Hall v. Haynes*, 319 S.W.3d 564, 577 (Tenn. 2010) (quoting *Estate of McFerren v. Infinity Transp., LLC*, 197 S.W.3d 743, 748 (Tenn. Workers Comp. Panel 2006)). Moreover, actual notice of a lawsuit "does not excuse the failure to serve process in compliance with our Rules of Civil Procedure." *Id.* at 574.

Rule 4.04 instructs, in relevant part:

The plaintiff shall furnish the person making the service with such copies of the summons and complaint as are necessary. Service shall be made as follows:

Service by mail of a summons and complaint upon a defendant may be made by the plaintiff, the plaintiff's attorney or by any person authorized by statute. After the complaint is filed, the clerk shall, upon request, furnish the original summons, a certified copy thereof and a copy of the filed complaint to the plaintiff, the plaintiff's attorney or other authorized person for service by mail. Such person shall send, postage prepaid, a certified copy of the summons and a copy of the complaint by registered return receipt or certified return receipt mail to the defendant. If the defendant to be served is an

individual or entity covered by subparagraph (2), (3), (4), (5), (6), (7), (8), or (9) of this rule, the return receipt mail shall be addressed to an individual specified in the applicable subparagraph. The original summons shall be used for return of service of process pursuant to Rule 4.03(2). Service by mail shall not be the basis for the entry of a judgment by default unless the record contains either (a) a return receipt showing personal acceptance by the defendant or by persons designated by Rule 4.04 or statute; or (b) a return receipt stating that the addressee or the addressee's agent refused to accept delivery, which is deemed to be personal acceptance by the defendant pursuant to Rule 4.04(11). . . .

Tenn. R. Civ. P. 4.04(10). For service upon an individual, Rule 4.04 authorizes delivering copies of the summons and the complaint "to an agent authorized by appointment or by law to receive service on behalf of the individual served." Tenn. R. Civ. P. 4.04(1). For service upon a municipality, Rule 4.04 requires "delivering a copy of the summons and of the complaint to the chief executive officer thereof, or to the city attorney." Tenn. R. Civ. P. 4.04(8).

Our Supreme Court's opinion in *Hall* addressed the issue of whether service by certified mail is proper where it is signed for by persons who have not been authorized to accept service of process of lawsuits upon an individual defendant. *Hall*, 319 S.W.3d at 577–81. The Court held "that a person with the authority to sign for and receive certified mail does not, without more, qualify as an agent authorized by appointment to receive service of process on behalf of an individual defendant." *Hall*, 319 S.W.3d at 581. The Court also offered some practice tips: "When sending the summons and complaint via certified or registered mail, the plaintiff may . . . restrict[] delivery to a specific person [and] . . . [i]f delivery by certified mail fails in the first instance, Rule 4.03(2) expressly states that 'service by mail may be attempted again or other methods authorized by these rules or by statute may be used.'" *Id.* The plaintiff has the burden of proving that the person he or she elected to serve is the defendant's authorized agent for service of process. *See, e.g., Milton v. Etezadi*, No. E2012-00777-COA-R3-CV, 2013 WL 1870052, at *6 (Tenn. Ct. App. May 3, 2013).

In this case, Plaintiff filed a copy of the "returned" summonses with attached postal service certified mail return receipts for Defendants Brown, Boyd, Canale, Colvett, Currie, Greer, Hedgepeth, Johnson, Jones, Morgan, Robinson, and Strickland. Plaintiff also filed a copy of the "returned" summonses for Defendants Conrad, Swearngen, and Neal, but did not attach a certified mail return receipt. On their face, all of the summonses filed by Plaintiff are defective because none of them contain the affidavit required by Rule 4.03(2). Also, the summonses for Defendants Conrad, Neal, and Swearngen lack the attached certified mail return receipt required by Rule 4.03(2). Furthermore, none of the certified mail return receipts are signed by the defendant named in the summons, so service was incomplete. *See* Tenn. R. Civ. P. 4.03(2). To the extent that Plaintiff also attempted to

serve the City of Memphis with process, he failed to do so because the record does not contain proof that a copy of the summons and of the complaint were served upon the chief executive officer or the city attorney for the City of Memphis. *See* Tenn. R. Civ. P. 4.04(8).

Additionally, service by certified mail was not perfected in this case because Plaintiff failed to prove that the staff members who received and signed for the summons that he tried to serve via certified mail were agents authorized by appointment or law to receive service of process on behalf of the individual defendants. Rule 4.03(2) plainly requires the signature of the defendant or a person designated under Rule 4.04 or statute for service by mail to be complete. Tenn. R. Civ. P. 4.03(2); 4.04(1). Instead, the uncontroverted affidavit evidence submitted by Defendants establishes that, in each instance, the person served was an office staff member who did not have authority to accept service of process.

The only relevant statements Plaintiff presents on appeal are that service of process was completed pursuant to Rule 4 because “[c]ertified mail returns receipt [sic] was perfected and green cards were filed and have been filed with the clerk of court” and “Tennessee Law makes clear that a complaint cannot be denied when a corrected service was completed to the person who receives service of process to receive complaints against City officials.” Plaintiff does not include any citation to the record on appeal to support these assertions. In fact, the record totally controverts them. Plaintiff has never addressed the fact that the “green cards” were not signed by any of the defendants. In the trial court, Defendants submitted many filings detailing the deficiencies in service of process, yet Plaintiff took no action to correct those deficiencies or to effect proper service. Based upon the record, we must conclude that Plaintiff failed to properly serve process on Defendants in compliance with the Tennessee Rules of Civil Procedure.

Due to Plaintiff’s failure to comply with Rule 4, the trial court correctly determined that it did not acquire personal jurisdiction over Defendants. Discerning no error and with the foregoing considerations in mind, we affirm the trial court’s order dismissing the complaint pursuant to Tennessee Rule of Civil Procedure 12.02 on the defenses of lack of jurisdiction over the person, insufficiency of process, and insufficiency of service of process.

Frivolous Appeal

Defendants also contend that Plaintiff has filed a frivolous appeal, rendering him liable for damages to them on appeal pursuant to Tennessee Code Annotated section 27-1-122, which 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 decision whether to award damages for a frivolous appeal rests solely in our discretion. *Chiozza*, 315 S.W.3d at 493. Appellate courts exercise their discretion to award fees under this statute “sparingly so as not to discourage legitimate appeals.” *Eberbach v. Eberbach*, 535 S.W.3d 467, 475 (Tenn. 2017) (quoting *Whalum v. Marshall*, 224 S.W.3d 169, 181 (Tenn. Ct. App. 2006)). “Successful litigants should not have to bear the expense and vexation of groundless appeals.” *Whalum*, 224 S.W.3d at 181 (quoting *Davis v. Gulf Ins. Grp.*, 546 S.W.2d 583, 586 (Tenn. 1977)). “A frivolous appeal is one that is ‘devoid of merit,’ or one in which there is little prospect that it can ever succeed.” *Indus. Dev. Bd. v. Hancock*, 901 S.W.2d 382, 385 (Tenn. Ct. App. 1995).

This appeal had no prospect of success. Plaintiff pursued the appeal relying on a brief that significantly fails to comply with the requirements of Tennessee Rule of Appellate Procedure 27 and Rule 6 of the Rules of the Court of Appeals of Tennessee. Plaintiff devotes nearly all of his brief to advancing irrelevant narrative arguments pertaining to prior litigation rather than addressing, with reference to authority and to the record, the order actually appealed from. Also, Plaintiff’s brief contains material that was not presented to the trial court. With all of the above considerations in mind and exercising our discretion, we grant Defendants’ request for attorney fees incurred on appeal, the amount of which the trial court shall determine upon remand.

V. CONCLUSION

We affirm the judgment of the trial court. The case is remanded for such further proceedings as may be necessary and consistent with this opinion, including a determination of the proper amount of appellate attorney fees and entry of judgment thereon. Costs of the appeal are taxed to the appellant, Steven Simmons.

JOHN W. McCLARTY, JUDGE