

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-000165-MR

JODI SIMMONS

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT  
HONORABLE KAREN A. CONRAD, JUDGE  
ACTION NO. 13-CI-00517

CITIBANK, N.A., SUCCESSOR TO CITIBANK

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KRAMER, CHIEF JUDGE; DIXON AND TAYLOR, JUDGES.

DIXON, JUDGE: Jodi Simmons, *pro se*, appeals from a summary judgment rendered by the Oldham Circuit Court in favor of Appellee, Citibank, N.A. We affirm.

In 2013, Citibank filed a complaint against Simmons, alleging that she owed Citibank a credit card debt of \$7,849.46. Simmons filed an answer denying Citibank's allegations. Following a period of discovery, Citibank moved for

summary judgment. Citibank tendered the affidavit of its records custodian, along with copies of Simmons's account statements and the signed credit card application. Simmons filed an affidavit in response, asserting there were inaccuracies in the documents tendered by Citibank. The court granted summary judgment in favor of Citibank, and this appeal followed.

On appeal, Simmons contends there was insufficient evidence to establish she owed the credit card debt to Citibank and that the circuit court erred by failing to refer the matter to arbitration.

As an initial matter, we note Simmons's appellate brief does not comply with the requirements set forth in CR 76.12. Despite the mandates of CR 76.12(4)(c)(v), her brief does not contain a single citation to the record, and there are no references to the record showing how the issues were preserved for appellate review. We have wide latitude to determine the proper remedy for a litigant's failure to follow the rules of appellate procedure. *Age v. Age*, 340 S.W.3d 88, 97 (Ky. App. 2011). "Our options when an appellate advocate fails to abide by the rules are: (1) to ignore the deficiency and proceed with the review; (2) to strike the brief or its offending portions, CR 76.12(8)(a); or (3) to review the issues raised in the brief for manifest injustice only . . . [.]” *Hallis v. Hallis*, 328 S.W.3d 694, 696 (Ky. App. 2010).

In considering the available options, we are not inclined to simply disregard the deficiencies in Simmons's brief. *See id.* Rather than strike the brief, we elect to review the issues for manifest injustice, which occurs if “the error so seriously

affected the fairness, integrity, or public reputation of the proceeding as to be shocking or jurisprudentially intolerable.” *Commonwealth v. Jones*, 283 S.W.3d 665, 668 (Ky. 2009) (internal quotation marks and citation omitted).

We have reviewed Simmons’s claims, and we find no basis for concluding manifest injustice occurred. On the issue of arbitration, the record reflects Simmons did not establish an arbitration agreement existed. “[A] party seeking to compel arbitration has the initial burden of establishing the existence of a valid agreement to arbitrate.” *Ping v. Beverly Enterprises, Inc.*, 376 S.W.3d 581, 590 (Ky. 2012).

As to the sufficiency of the evidence, Citibank presented the affidavit of its records custodian, itemized billing statements addressed to Simmons, and a credit card application signed by Simmons. The record indicates Simmons failed to produce any affirmative evidence to defeat Citibank’s motion for summary judgment. “Unsupported allegations are insufficient to create a genuine issue of material fact.” *de Jong v. Leitchfield Deposit Bank*, 254 S.W.3d 817, 825 (Ky. App. 2007). Likewise, “[a] party's subjective beliefs about the nature of the evidence is not the sort of affirmative proof required to avoid summary judgment.” *Haugh v. City of Louisville*, 242 S.W.3d 683, 686 (Ky. App. 2007). We conclude the circuit court properly granted summary judgment in favor of Citibank.

For the reasons stated herein, the judgment of the Oldham Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jodi Simmons, *pro se*  
LaGrange, Kentucky

BRIEF FOR APPELLEE:

Robert K. Hogan  
John Sienkiewicz  
Cincinnati, Ohio