

Rel: December 11, 2020

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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Winston Guthrie

v.

David Ray Fanning

Appeal from Limestone Circuit Court
(CV-20-01)

SELLERS, Justice.

Winston Guthrie sued David Ray Fanning seeking damages for false arrest, malicious prosecution, and defamation. The Limestone Circuit

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Court entered a summary judgment in favor of Fanning, and Guthrie, acting pro se, appeals. We affirm.

Facts

In August 2009, Guthrie entered a guilty plea to the charges of sodomy and sexual abuse of several minor boys, including Fanning's son (hereinafter referred to as "the victim"). Guthrie was sentenced to 10 years' imprisonment; that sentence was split and Guthrie served 1 year followed by 3 years' supervised probation. As a convicted sex offender, Guthrie was required to comply with all parts of the Alabama Sex Offender Registration and Community Notification Act, § 15-20A-1 et seq., Ala. Code 1975 ("the ASORCNA"). At issue in this appeal is § 15-20A-16(c), Ala. Code 1975, a part of the ASORCNA, which provides that "[n]o sex offender shall make any harassing communication, directly or indirectly, in person or through others, by phone, mail, or electronic means to the victim or any immediate family member of the victim." Any person who knowingly violates § 15-20A-16(c) is guilty of a Class C felony. See § 15-20A-16(f), Ala. Code 1975.

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In 2012, following resolution of the 2009 case, Guthrie sued Fanning in the Limestone Circuit Court; that case was dismissed. In April 2018, Guthrie sent a letter addressed to Fanning and Fanning's wife that Fanning perceived as harassing. An investigator with the Madison County Sheriff's Department reviewed the letter and advised Fanning of the warrant procedure and the necessity to talk with a magistrate, which Fanning did. After determining that probable cause existed, a Madison County district-court magistrate issued a complaint against Guthrie charging him with the offense of harassing communications, a violation of § 13A-11-8(b)(1)(a), Ala. Code 1975.¹ The offense of harassing communications under § 13A-11-8(b)(1)(a) constitutes a Class C misdemeanor. See § 13A-11-8(b)(2), Ala. Code 1975.

¹Section 13A-11-8(b)(1) provides that "[a] person commits the crime of harassing communications if, with intent to harass or alarm another person, he or she does any of the following:

"a. Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written or electronic communication, in a manner likely to harass or cause alarm."

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Christopher J. Donovan, an assistant district attorney assigned to prosecute the case, determined that Guthrie should not have been charged with the misdemeanor offense of harassing communications under § 13A-11-8(b)(1)(a); rather, he should have been charged with the felony offense of contacting the victim's family with the intent to harass, under § 15-20A-16(c) of the ASORCNA. Donovan explained in his affidavit:

"I was assigned to prosecute the case pursuant to the standard procedures within the Madison County District Attorney's Office. As part of our standard procedures and practice within the Department, I reviewed the letter from Guthrie, the [district-court] complaint, and the criminal history of the accused, Winston Guthrie. I found where Mr. Guthrie had been convicted in 2009 of sexual abuse and was a registered sex offender pursuant to Alabama law. I then discussed the content of the [district-court] complaint with Madison County Deputy District Attorney, Tim Gann. Mr. Gann had been the prosecutor in the sex abuse case against Mr. Guthrie in 2009. Mr. Gann and I agreed that while Guthrie's letter was certainly harassing in content, the [district-court] complaint should actually have been a felony charge pursuant to [§ 15-20A-16(c) of the ASORCNA]."

(Emphasis added.)

The State thereafter nolle prossed the district-court case charging Guthrie with the misdemeanor offense of harassing communications and indicted him for the felony offense of contacting the victim's family

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member with intent to harass under the ASORCNA. At that time, Guthrie also had another indictment pending charging him with two counts of failing to properly register as a sex offender as required by the ASORCNA. Guthrie entered into a plea agreement as to the ASORCNA violations, and he was sentenced to eight years' imprisonment; that sentence was split, and Guthrie was ordered to serve one year in a community-corrections program followed by four years' probation.

On January 13, 2020, while Guthrie was serving time in the community-corrections program, he sued Fanning seeking damages for false arrest, malicious prosecution, and defamation of character. The gist of the complaint is that Fanning had unlawfully accused Guthrie of harassing communications which, Guthrie alleged, resulted in Guthrie being falsely arrested. Fanning moved for a summary judgment pursuant to Rule 56(c), Ala. R. Civ. P., which Guthrie opposed. Following a hearing, the trial court entered a summary judgment in favor of Fanning. This appeal followed.

Discussion

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As indicated, this case stems from Guthrie's violation of § 15-20A-16(c) of the ASORCNA. Guthrie has favored this Court with a brief that not only fails to acknowledge the ASORCNA, but also fails to comply with Rule 28, Ala. R. App. P. Rule 28(a)(10), Ala. R. App. P., requires the argument section of an appellant's brief to include "the contentions of the appellant ... with respect to the issues presented, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on." This rule simply reflects that in appellate advocacy, it is neither the function nor the duty of this Court to perform a party's legal research. Ex parte Borden, 60 So. 3d 941 (Ala. 2007). When an appellant fails to support his arguments with any legal authority, this Court will not address those arguments. Lee v. Houser, 148 So. 3d 406 (Ala. 2013). We further add that this Court is no more forgiving of pro se litigants than those represented by counsel. Walker v. Blackwell, 800 So. 2d 582 (Ala. 2001). In this case, Guthrie's brief is entirely devoid of any citations to the record, and the only legal authority cited pertains to the summary-judgment standard of review. The brief also contains arguments that are presented for the first time on appeal and that thus cannot be considered.

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Andrews v. Merritt Oil Co., Inc., 612 So. 2d 409 (Ala. 1992). Because Guthrie has failed to present this Court with a brief that complies with Rule 28, the arguments presented in the brief are deemed waived and the summary judgment in favor of Fanning is affirmed.

Finally, Fanning has requested an award of attorney fees pursuant to the Alabama Litigation Accountability Act, § 12-19-270 et seq., Ala. Code 1975 ("the ALAA"), for defending this appeal which, he says, Guthrie knew or should have known was without substantial justification. Fanning also asserts that Guthrie has used the court system to improperly penalize Fanning for Guthrie's criminal convictions and to continue to harass Fanning despite the ASORCNA's prohibition against contact with the victim's family.

Initially, we note that the appellate courts of this State are authorized under the ALAA and Rule 38, Ala. R. App. P., to award attorney fees as a sanction for certain filings. Section 12-19-272(a), Ala. Code 1975, a part of the ALAA, provides, in relevant part:

"(a) Except as otherwise provided in this article, in any civil action commenced or appealed in any court of record in this state, the court shall award, as part of its judgment and

in addition to any other costs otherwise assessed, reasonable attorneys' fees and costs against any attorney or party, or both, who has brought a civil action, or asserted a claim therein, or interposed a defense, that a court determines to be without substantial justification, either in whole or part;

"

"(c) The court shall assess attorneys' fees and costs against any party or attorney if the court, upon the motion of any party or on its own motion, finds that an attorney or party brought an action or any part thereof, or asserted any claim or defense therein, that is without substantial justification, or that the action or any part thereof, or any claim or defense therein, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceedings by other improper conduct"²

(Emphasis added.) See Williams v. Capps Trailer Sales, Inc., 607 So. 2d 1272 (Ala. Civ. App. 1992) (awarding attorney fees for defendants under ALAA for appeal brought without substantial justification); see also § 12-19-276, Ala. Code 1975 (noting that the provisions of the ALAA "are cumulative and in addition to the damages which may be awarded for a frivolous appeal pursuant to Rule 38, Alabama Rules of Appellate

²Section 12-19-271, Ala. Code 1975, requires that for an action, claim, or defense to be "without substantial justification," it must be "frivolous, groundless in fact or in law, or vexatious, or interposed for any improper purpose."

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Procedure"). Rule 38, Ala. R. App. P., authorizes an appellate court, ex mero motu, to "award just damages and single or double costs to the appellee" if the court determines that an appeal is frivolous. See Walker, supra. (imposing Rule 38, Ala. R. App. P., sanctions against pro se litigant for frivolous appeal), and May v. May, 292 So. 3d 385 (Ala. Civ. App. 2019) (awarding attorney fees to wife under Rule 38, Ala. R. App. P., for husband's frivolous appeal that presented the wife and appellate court with no legal argument for reversal).

After reviewing the facts and history of this case, we conclude that Fanning's request for attorney fees in defending this appeal is justified under either Rule 38 or the ALAA because the appeal is frivolous, it was brought without substantial justification, and it was interposed for the primary improper purpose of harassing Fanning and disparaging his character. Guthrie's opening brief grossly misrepresents the nature of this appeal. As indicated, the State indicted Guthrie for contacting the victim's family with the intent to harass, a felony offense under § 15-20A-16(c) of the ASORCNA. Guthrie, however, fails to disclose any facts regarding his conviction and history of sexual abuse, nor does he provide

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any discussion of the ASORCNA. Rather, he makes numerous unsupported allegations against Fanning and insists that he was justified in bringing a civil action against him. Specifically, Guthrie represents that the district-court case charging him with the misdemeanor offense of harassing communications under § 13-11-8(b)(1)(a) was nolle prossed because, he says, the State determined that the case had no merit. Guthrie then asserts that, because the State determined that the case charging him with the misdemeanor offense had no merit, he was justified in suing Fanning to recover damages for false arrest, malicious prosecution, and defamation. Those assertions are far from true and are material misstatements intended to mislead this Court. The district-court case charging Guthrie with the misdemeanor offense of harassing communications under § 13-11-8(b)(1)(a) was nolle prossed not because it lacked merit, but because the State determined that Guthrie should have been charged with a felony offense instead of a misdemeanor. Guthrie ignores the fact that harassing communications with the victim's family are prohibited by the ASORCNA. In fact, during the summary-judgment

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hearing, the trial court admonished Guthrie for initiating the civil action against Fanning:

"I have no sympathy for you. You should not have ever initiated this [action]. You have no claim. I'm going to grant summary judgment. I am astounded, frankly, that [the Fanning family has not] asked for costs ... against you under the [ALAA], which had they asked I probably would have granted, attorney's fees. I'm astounded that you haven't been prosecuted for your actions. If you were in my court and I had sentenced you I promise I would have dealt with you, because there is a reason -- you need to leave this family alone."

In other words, Guthrie clearly knew or should have known that the action he filed against Fanning was without substantial justification. Yet, despite the trial court's admonishment of Guthrie for filing the action and despite being told that he had no claim, Guthrie filed the instant appeal, in which he has presented this Court with no legal basis for reversal. Guthrie flagrantly ignored the requirements of Rule 28; the arguments in the brief are not supported by legal authority, there are no citations to the record, and the facts contain substantial omissions and material misstatements. In essence, this appeal stems from the second unsuccessful complaint that Guthrie has filed against Fanning resulting in litigation that has burdened the judicial resources of both the trial court

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and this Court, interfered with the effective administration of justice, and subjected Fanning and his family to unwarranted and continued harassment.

Fanning has submitted with his brief an affidavit of his attorney, Byrd R. Latham, who avers that he charged Fanning \$3,495 for reviewing the trial-court transcript, researching the law, reviewing Guthrie's appellate brief, and drafting Fanning's appellate brief.³ Latham further asserts that the amount he charged Fanning in defending this appeal is reasonable. In his reply brief, Guthrie wholly fails to acknowledge Fanning's request for attorney fees in defending the appeal and, to his detriment, pleads nothing in opposition to the contents of Latham's affidavit regarding the reasonableness of the fees charged. In light of the factual background of this case, we assess attorney fees against Guthrie in the amount of \$3,495.

Conclusion

³Fanning did not request attorney fees in defending the underlying action in the trial court, which, he states, totaled \$6,177.40.

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The summary judgment in favor of Fanning is affirmed, and Fanning's request for an award of attorney fees on appeal is granted.

AFFIRMED; REQUEST FOR ATTORNEY FEES GRANTED.

Parker, C.J., and Bolin, Wise, and Stewart, JJ., concur.