

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-000863-MR

WILLIAM MORELAND

APPELLANT

v. APPEAL FROM PENDLETON CIRCUIT COURT
HONORABLE JAY DELANEY, JUDGE
ACTION NO. 09-CI-00284

CHRIS PARKER AND LISA PARKER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: William Moreland, *pro se*, appeals from the May 9, 2011, Findings of Fact, Conclusions of Law, Judgment, and Order of the Pendleton Circuit Court finding in favor of Chris and Lisa Parker in their civil action against Moreland arising from a property sale dispute. For the reasons stated, we affirm.

Before addressing the merits, we are compelled to address the failure of Moreland's brief to comply with Kentucky Rules of Civil Procedure (CR)

76.12. This appellate rule addresses the form and content for appellate briefs that are filed in this Court on appeal. While Moreland was represented by counsel at the bench trial of this action in circuit court, his notice of appeal and subsequent filings with this Court, including appellate brief, were submitted by Moreland, *pro se*. First, Moreland's brief fails to contain a statement of authorities as required by CR 76.12(4)(c)(iii). Second, the brief fails to provide a cogent statement of the case including a chronological summary of the facts and procedural events necessary for this Court to understand the issues presented on appeal and more importantly, there are absolutely no references to the specific pages of the record on appeal supporting each statement of fact as set forth in the brief. CR 76.12(4)(c)(iv). Finally, the brief is totally lacking of any substantive argument, conforming to a statement of points and authorities, and again provides absolutely no references to the record or citation of authority pertinent to each issue of law that is applicable to the appeal and further fails to show whether that issue was properly preserved for review. CR 76.12(4)(c)(v).

As a result of Moreland's failure to comply with CR 76.12, this Court has had significant difficulty in attempting to identify and address the issues that are raised on appeal. CR 76.12(8)(a), permits this Court the discretion to strike Moreland's brief in its entirety because of his failure to comply with the Civil Rules. If we were to strike the brief, our review would then be limited to the record to determine if manifest injustice has occurred. *Elwell v. Stone*, 799 S.W.2d 46 (Ky. App. 1990).

However, given that Moreland has proceeded *pro se* in this appeal and is not a frequent *pro se* filer of appeals in this Court, we have elected not to strike his brief and have otherwise afforded him substantial leniency in attempting to discern the issues and arguments raised upon appeal. *See Beecham v. Com.*, 657 S.W.2d 234 (Ky. 1983). This Court has also thoroughly reviewed the record on appeal in order to ascertain the relevant facts and to address the issues raised by Moreland as fully as possible, given the limitations that are created as a result of Moreland's rambling, and at times incoherent arguments regarding the proceedings below. We continue with our review and analysis accordingly.

The underlying action stems from an agreement between the parties regarding the purchase of a mobile home and parcel of real property upon which the home was located. In June 2008, the Parkers agreed to purchase the mobile home and real property from Moreland for \$32,000, of which \$9,000 was paid as a down payment. The remaining \$23,000 balance was to be paid directly to Moreland at the rate of \$500 per month with no interest. A Land Installment Agreement dated June 9, 2008, was signed by the parties. In exchange for the large down payment, Moreland agreed to assist the Parkers in their repair and restoration of the home by covering the costs and assisting with the labor. However, Moreland failed to honor that agreement and instead succeeded only in the purchase of a used furnace which was dropped off at the home but never installed. Accordingly, the Parkers were required to spend an additional \$2,000 towards the repair of the home.

Thereafter, Moreland purchased a Dodge Durango from the Parkers for \$4,000. As payment, Moreland agreed to credit the Parkers for five of their monthly payments towards the home, for a total of \$2,500, and pay the remaining balance of \$1,500 in cash. However, Moreland failed to tender the full amount and instead only paid the Parkers an additional \$867 in cash.

In the interim, Moreland had failed to install the furnace and the home became uninhabitable, due to the lack of heat. The Parkers were then forced to move in with a parent. Moreland approached the Parkers and suggested they rent the home to a third party, and offered to reduce the monthly payment to \$300. The parties signed an annulment of the June 2008 Land Installment Agreement on April 22, 2009, as well as a new purchase agreement on the same day, which transferred the same property and home to the Parkers for \$23,000, with payments at the rate of \$300 per month with 10 percent interest. The Parkers sub-leased the property to Les Buckler for \$350 a month. Buckler also agreed to purchase the property within six months. However, Buckler fell behind in his payments. At the suggestion of Moreland, and with his assistance, the Parkers evicted Buckler.

The parties next negotiated an agreement to cancel the April 22, 2009, purchase agreement and effectively transfer the property back to Moreland. It was agreed that Moreland would refund the \$9,000 deposit to the Parkers and transfer two vehicles to them. On June 9, 2009, the parties signed an annulment of the April 22, 2009, Purchase Agreement and title papers to transfer the two

vehicles to the Parkers. After an inspection of the property, the parties agreed that it was in good condition and undamaged.

Shortly thereafter, while Lisa Parker was driving one of the transferred vehicles, the engine failed. The car was towed to an impound lot and never returned to the Parkers. Moreland failed to make any payments towards the \$9,000 that he owed the Parkers. After several failed attempts to collect payment from Moreland, the Parkers received a letter indicating that Moreland would not be paying because the real property (including the mobile home) had been damaged. The Parkers then filed a complaint in the Pendleton Circuit Court, seeking recovery of the \$9,000 as well as other damages. Moreland counterclaimed for the alleged damages to his property by the Parkers.

The trial court conducted a bench trial on February 3, 2011, during which Moreland was represented by counsel. On May 9, 2011, the trial court's findings of fact, conclusions of law, and judgment were entered. The trial court concluded that Moreland had breached the first agreement between the parties by failing to assist in the repairs of the property, but the Parkers had failed to show sufficient proof of their damages. The trial court also concluded that Moreland had breached the agreement to annul both contracts when he failed to return the \$9,000 deposit after the Parkers had released their interest in the property. Accordingly, the trial court found in favor of the Parkers and awarded them a judgment against Moreland in the amount of \$9,000 plus interest at the judgment rate of 12 percent. Moreland's counterclaim was dismissed. This appeal follows.

As noted, Moreland's brief to this Court does not present a coherent argument regarding the issues being raised on appeal of the trial court's judgment. In his brief, Moreland makes generalized statements regarding the inadmissibility of evidence at trial; alleges that the Parkers gave false testimony; and, in most part, argues that his version of the facts should have been accepted over testimony of the Parkers. Again, in his brief, Moreland makes no reference to the record or any assignment of specific error by the trial court, or how any alleged errors were preserved for review. Through various attachments to his brief, Moreland is attempting to reintroduce the evidence from below and is essentially asking this Court to retry his case.

It is not the role of the Court of Appeals to make findings of fact, determine liability, or otherwise retry the evidence presented to the trial court. We are limited in our review to determine if any errors were made in the proceedings below. Under CR 52.01, "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." And, "findings of fact are clearly erroneous only if they are manifestly against the weight of the evidence." *Frances v. Frances*, 266 S.W.3d 754, 756 (Ky. 2008) (citation omitted). Contrary to Moreland's invitation, this Court cannot substitute its opinion for that of the trial court with regard to the weight given to certain evidence, including the testimony of witnesses. *B.C. v. B.T.*, 182 S.W.3d 213 (Ky. App. 2005). The trial judge was in the best position to weigh the credibility of the witnesses, which is reflected in

the judgment. Based on our review of the trial proceedings, the testimony of the Parkers is sufficient to support the findings of the trial court and Moreland has therefore failed to demonstrate how the court's findings are clearly erroneous.

Moreland also makes general allegations or arguments regarding the statute of frauds, accord and satisfaction, misrepresentations by the Parkers, improper conduct by the Parkers' attorney, ineffectiveness of his own attorney, and the failure of the trial court to give him a fair trial. However, Moreland offers no legal authority or factual support for his arguments. Moreland again fails to cite to the record, fails to show where his arguments are preserved, and fails to cite to any case law or statute in support of his arguments. General, nonspecific allegations that the trial court "got it wrong," without any supporting legal basis, will not suffice to support a reversal of a trial court on appeal in Kentucky. Pursuant to CR 52.01, we find no error in the proceedings below.

For the foregoing reasons, the May 9, 2011, judgment of the Pendleton Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

William Moreland, *Pro Se*
Butler, Kentucky

BRIEF FOR APPELLEE:

Robert E. Bathalter
Alexandria, Kentucky