

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000476-MR

DAN CALVERT

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE JOSEPH W. CASTLEN III, JUDGE
ACTION NO. 10-CI-01244

DIANE RECTOR; DIANE RECTOR,
in her capacity as Executor of the
ESTATE of JAMES CALVERT;
AND DONNA LEWIS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, COMBS, AND LAMBERT, JUDGES.

COMBS, JUDGE: Dan Calvert appeals the judgments against him entered on December 29, 2011, and February 21, 2012, in Daviess Circuit Court. Due to the severe deficiencies of his brief, we decline to address the merits and, therefore, affirm.

Kentucky Rule[s] of Civil Procedure (CR) 76.12 provides guidelines for appellate briefs. “A brief may be stricken for failure to comply with any substantial requirement of this Rule[.]” CR 76.12(8)(a). We routinely exercise leniency with parties proceeding *pro se*. However, in this case, Calvert is represented by counsel, and the errors are both serious and numerous.

CR 76.12(4)(c)(i) directs that a brief include an INTRODUCTION “not exceeding two simple sentences[.]” The introduction of Calvert’s brief contains three sentences. Although this error alone surely is not a serious one, it marks the beginning of a series of deficiencies that cumulatively mandate our striking the brief.

The next error is more troubling. CR 76.12(4)(c)(iv) requires a STATEMENT OF THE CASE “consisting of a chronological summary of the facts and procedural events *necessary to an understanding of the issues* presented by the appeal, *with ample references*” to the record. (Emphases added). Calvert’s brief explains neither the factual nor procedural history of the case. It fails to identify either the appellees or the action that had been filed in circuit court presumably underlying this appeal. The brief fails to explain its objection to the judgment from which the appeal is taken. Thus, this Court is put in the untenable position of speculating as to the possible legal premise supposedly supporting the appeal. Furthermore, there are *no* references to the record – much less the ample references required by the rule. It is not the responsibility or prerogative of the court to search the record for support of a party’s contentions. We are neither

required nor empowered to practice law in lieu of or on behalf of the parties before us. *Smith v. Smith*, 235 S.W.3d 1, 5 (Ky. App. 2006).

Finally, Calvert's brief also fails to comply with CR 76.12(4)(c)(v), which requires a reference to the record supporting preservation of the errors asserted in the ARGUMENT section of the brief. This rule also directs that the argument include references to the record. And again, Calvert has failed to cite to the record in support of his contentions.

While striking a brief is indeed an ultimate recourse, we note the admonition recently articulated by this Court in the separate concurrence of Senior Judge Harris:

[T]he Court should strike the Appellant's brief because of ***blatant failure*** to comply with the requirement that an appellate brief set forth "ample references to the specific pages of the record" I fear that letting lawyers get by with the disregard of the rules serves only to foster and encourage further erosion of the standards to which Kentucky lawyers should be held.

J.M. v. Commonwealth, Cabinet for Health and Family Services, 325 S.W.3d 901, 904 (Ky. App. 2010) (Sr. J. Harris concurring). (Emphasis added.)

Regrettably, the failures in this case are so blatant as to compel our striking the brief. We affirm the Daviess Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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