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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001722-DG

EDWARD FLINT APPELLANT

ON DISCRETIONARY REVIEW FROM JEFFERSON CIRCUIT COURT
v. HONORABLE MARTIN MCDONALD, JUDGE
ACTION NO. 12-XX-000076

KATHLEEN WINE APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, NICKELL AND THOMPSON, JUDGES.

NICKELL, JUDGE: Edward Flint, *pro se*, appeals from an opinion and order entered by the Jefferson Circuit Court dismissing with prejudice an appeal from Jefferson District Court for noncompliance with CR[1] 72.06(1) and 72.10(1). We affirm.

FACTS AND PROCEDURAL HISTORY

[1] Kentucky Rules of Civil Procedure.

Flint owns and resides in one of sixty-eight condominium units known as Coach House, Inc. in Louisville, Kentucky. All unit owners are members of the Coach House, Inc. Association (Association). The Association is run by seven unpaid directors who are elected by the membership.

On May 18, 2012, Flint filed a complaint in Jefferson District Court against Kathleen Wine, one of the directors who agreed to be the Association's secretary. Flint alleged Wine violated statutes, lied, failed to perform duties assigned to her by Association bylaws, and personally discriminated against Flint. Flint demanded four things: a jury trial; Wine's removal from the Association's Board of Directors if jurors found her guilty; reimbursement of all Flint's expenses associated with the litigation; and, "[n]ot to exceed this courts (sic) limit, compensatory and punitive damages as determined by a jury for any allegation that the jury finds defendant guilty."

Wine answered the complaint on June 4, 2012, asserting two defenses —failure to state a cause of action on which relief may be granted and lack of subject matter jurisdiction because Flint was seeking "equitable relief" which was outside the district court's authority to give. Included in the answer was a request that the complaint be dismissed.

In August of 2012, Wine filed a separate motion to dismiss due to lack of subject matter jurisdiction. The motion focused on Flint's litigious nature and his tactic of filing numerous *pro se* lawsuits against board members, judges and elected officials, many of which had been summarily dismissed. Wine argued

dismissal was necessary because "matters of equity" are outside district court subject matter jurisdiction and Flint had demanded Wine's removal from her positions as Association secretary and director if she were found guilty by a jury.

Flint filed a written response to Wine's request for dismissal focusing on the assertion that the district court lacked subject matter jurisdiction to hear the case because KRS[2] 24A.010 excepts "matters of equity" from district court authority. Flint argued the case "is not about equity it's about damages." Citing KRS 24A.120, Flint pointed out district courts have exclusive jurisdiction over civil matters where the amount in controversy does not exceed $5,000.00, exclusive of interests and costs. Flint stated he had carefully worded his complaint so as "[n]ot to exceed this courts (sic) limit[.]" Apparently Flint either overlooked or ignored his demand for Wine to be removed from her positions as Association secretary and director if found guilty—a remedy that would be equitable in nature and therefore, statutorily outside district court jurisdiction.

On August 13, 2012, an order was signed by Hon. Sandra L. McLaughlin dismissing the complaint due to the district court's lack of subject matter jurisdiction to grant equitable relief. On August 17, 2012, Flint filed a notice of appeal.

The appeal to circuit court was randomly assigned to Hon. Brian Edwards. He ultimately recused from the case on September 17, 2012, citing

[2] Kentucky Revised Statutes.

conflict with a party. The case was reassigned to Division Ten where Senior Judge Hon. Martin McDonald was presiding.[3]

On September 5, 2012, Flint filed a "Motion to Return the Case to District Court or Grant a Trial by Jury Date," in which he argued the complaint had been properly filed in district court since only one of his four demands requested equitable relief. On September 27, 2012, Judge McDonald signed an opinion and order dismissing the appeal with prejudice because Flint had failed to perfect the appeal by filing the statement of appeal required by CR 72.06(1) and 72.10(1). The circuit court found filing the statement of appeal is mandatory—the rule uses the word "shall"—and since a statement of appeal had never been filed—timely or otherwise—jurisdiction was never transferred from district court to circuit court. Judge McDonald went on to say he had discretion to take various actions and while *pro se* litigants enjoy relaxed rules of procedure,

> Flint's history makes him far more familiar with the workings of the justice system than other *pro se* litigants. Further, while there are many nuanced rules of law which even the most experienced *pro se* litigant may not understand, CR 72.10 states in clear, concise language the requirements for a statement of appeal. Given the straightforward language of the rule, the Court believes it cannot excuse Flint's failure to follow appropriate procedure. In light of this, dismissal is the appropriate action.

[3] Flint moved for another change of division—or abatement of the case until Division Ten was formally filled. The motion was based on Flint's prior accusations of bias against Judge McDonald. Judge McDonald denied the motion on October 3, 2012.

On October 3, 2012, Wine moved the circuit court to affirm the district court order dismissing the complaint due to lack of subject matter jurisdiction. Filing of the motion prompted Flint to file an objection which parroted prior pleadings; requested a hearing before a different judge; and sought to have Judge McDonald recuse because Flint had sued him in federal court. On November 1, 2012, Judge McDonald entered an order considering and denying Flint's motion for a different judge and recusal. We saw no ruling in the record on Wine's actual motion to affirm the district court order.

On November 7, 2013, a motion panel of this Court granted Flint's motion for discretionary review. Having reviewed the record, the briefs and the law, as explained below, we now affirm.

First, Flint is noncompliant with CR 76.12(4)(c)(v) requiring the brief for appellant to contain:

> [a]n "ARGUMENT" conforming to the statement of Points and Authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law and which shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

Flint's brief does not cite to the record,[4] nor does he provide a statement of preservation. Since Flint prides himself on proceeding *pro se*, he would do well to read and follow the rules of appellate procedure. Every litigant cannot create his own personal method of pursuing a case—that is the purpose of our rules and

[4] Instead, he cites to pleadings and statutes he attached to his brief as exhibits.

"[s]ubstantial compliance with CR 76.12 is essential and mandatory." *Krugman v. CMI, Inc.,* 437 S.W.3d 167, 171 (Ky. App. 2014), reconsideration denied (July 21, 2014) (internal citations omitted). Were we so inclined, we are authorized to strike Flint's brief for noncompliance. CR 76.12(8).

Second, the record provided to us is a single volume of pleadings containing just 51 pages. No hearings, if any occurred, have been included in the appellate record. The designation of record filed by Flint asks for the complete record, but does not mention any recordings. Thus, we have no recordings to review and, therefore, cannot substantiate Flint's allegations that Judge McDonald refused to let Flint speak; was rude to him because he was acting *pro se*; is biased against Flint because Flint had appeared before him in other cases and had sued Judge McDonald in federal court; and dismissed the appeal "for no reason except a vindictive reason." Without *evidence* showing a different view, we presume the missing record—if any there be[5]—supports the trial court's decision. *King v. Commonwealth*, 384 S.W.3d 193, 194-95 (Ky. App. 2012) (internal citations omitted).

Contrary to Flint's bold claim, Judge McDonald's opinion and order dismissing the appeal for noncompliance with court rules is supported by CR 72.06(1) and 72.10(1) and case law. As explained in *University of Kentucky Albert B. Chandler Medical Center v. Partin*, 745 S.W.2d 148, 148-49 (Ky. App. 1988),

[5] Flint states the district court dismissed the complaint without holding a hearing. The district court proceedings were not made part of our record.

> [f]iling a notice of appeal, or "taking an appeal," is a separate step from perfecting an appeal. The notice of appeal in an appeal from district court to circuit court is governed by CR 72.02 and, by incorporation, CR 73.01 through 73.03. To perfect an appeal from district court to circuit court, an appellant must file a statement of appeal within thirty days after the filing of the notice of appeal. The statement of appeal is governed by CR 72.06 through CR 72.10. Nothing in CR 6.02 limits a court's discretion to extend the time for filing a statement of appeal except to those grounds stated in CR 6.02. This conclusion is supported by CR 73.02(2), which states that the failure to timely file a notice of appeal is fatal to the appeal, but the failure of a party to timely complete other procedural steps "does not affect the validity of the appeal . . . but is ground only for such action as the appellate court deems appropriate. . . ."

Importantly, Flint never asked for additional time to correct his error and file a statement of appeal outside the thirty-day window provided by CR 72.08. Judge McDonald deemed Flint's failure to comply with this basic rule of appellate procedure to be fatal. We will not characterize that decision as an abuse of discretion because we cannot say it was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles"—the recognized test for abuse of discretion. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (internal citations omitted). Each time appellate rules are not enforced, they are eroded.

The statement of appeal[6] for a district court decision being appealed to circuit court contains mostly clerical information—details the appellate court clerk uses to serve the proper parties and set the appeal in motion. The statement of appeal also puts the appellate court on notice of whether oral argument is desired and evidence will be considered—two items that impact the scheduling of events in the appeal. 7 Ky. Prac. R. Civ. Proc. Ann. Rule 72.10. Filing the statement of appeal promotes the smooth functioning of Kentucky's courts and is an essential component of the court process.

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[6] CR 72.10(1) reads:

> A party or parties appealing from the judgment or a final order of the district court shall file with the clerk of the circuit court and serve on the appellee or appellees a statement of appeal signed by counsel for the appellant and setting forth:
>
> (a) The style of the case and the district court docket number;
> (b) The name, mailing address, and telephone number of each attorney whose appearance is entered in the case, together with the name of the party represented by the attorney;
> (c) The name of the district judge who presided over the matter being appealed;
> (d) The date on which the notice of appeal was filed and the date on which any notice of cross-appeal was filed;
> (e) A statement as to whether the matter has been before the circuit court on any previous occasion and whether reference to the record of the prior appeal is necessary;
> (f) The type of litigation;
> (g) A statement as to whether the appellant wants an oral argument;
> (h) A fair and accurate summary of the evidence heard by the district court, or a statement that the appeal does not require consideration of the evidence;
> (i) A concise statement of the legal questions and propositions on which the appellant relies for a reversal of the judgment, with citations of pertinent authority;
> (j) A concise statement of the relief to which the appellant contends he/she is entitled.

Rather than filing the mandatory rudimentary information, Flint instead filed a "Motion to Return the Case to District Court or Grant a Trial by Jury Date." However, that pleading did *not* supply the needed details in a different format. Seeing no basis for reversal, we affirm the circuit court's dismissal of the appeal with prejudice.

Wine has raised an alternative argument—that the circuit court could also have ruled in Wine's favor because the district court properly dismissed the complaint due to lack of subject matter jurisdiction. Because Wine did not raise this issue as a cross-appeal, we will not address it. However, a close reading of our description of the procedural history indicates we would have affirmed on that ground had the issue been before us.

Due to Flint's noncompliance with CR 72.06(1) and 72.10(1), we affirm the opinion and order of the Jefferson Circuit Court dismissing the appeal with prejudice.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Edward H. Flint, *pro se* Louisville, Kentucky	Harold W. Thomas Louisville, Kentucky