

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-001062-MR

CHER-O-KEE TRUCKBODIES;  
CHEROKEE SALES CORPORATION;  
CHEROKEE MANUFACTURING CORPORATION;  
JW CHERRY MANUFACTURING;  
CHERRY TREE CORPORATION;  
CHEROKEE PRODUCTS;  
SUSAN CHERRY, INDIVIDUALLY;  
SUSAN CHERRY AS ADMINISTRATRIX OF  
ESTATE OF JAMES W. CHERRY; AND  
SUSAN B. CHERRY

APPELLANTS

v. APPEAL FROM ROCKCASTLE CIRCUIT COURT  
HONORABLE DAVID A TAPP, JUDGE  
ACTION NO. 06-CI-00142

E.S.T. TOOL & MACHINE, INC.;  
A. EUGENE TAYLOR  
TIMOTHY TAYLOR; AND  
STEVEN TAYLOR

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, JONES, AND MAZE, JUDGES.

COMBS, JUDGE: Susan Cherry, *pro se*, brings this appeal in the case of *Cher-O-Kee Truckbodies, et al. v. E.S.T. Tool & Machine, Inc., et al.* Cherry was one of the parties involved with Cher-O-Kee. She disputes the order of the Rockcastle Circuit Court which awarded damages to E.S.T. After our review, we affirm.

As directed by their contract, Cher-O-Kee and E.S.T. participated in several sessions of arbitration in 2011 in order to resolve a dispute. The subject matter of the dispute is not pertinent to this appeal. The arbitrator's order of May 24, 2012, awarded \$26,587.85 to Cher-O-Kee and \$9,879.79 to E.S.T. for their counterclaim. The counterclaim award reduced Cher-O-Kee's award to \$16,708.06 as a offset. On June 4, 2012, Cher-O-Kee filed a motion for a new hearing, setting in motion post-arbitration proceedings. Both parties submitted arguments to the arbitrator.

Cherry was dissatisfied with the initial award. Before the post-arbitration proceedings could be resolved, she sent a letter to the arbitrator on August 30, 2012. She had learned that in 2003, the arbitrator had donated five hundred dollars for the Attorney General campaign of Greg Stumbo, the father of appellee's attorney. Cherry's letter demanded that the arbitrator disqualify himself and withdraw his findings; that he refund the fees that she had paid; and that he reimburse her attorney's fees. Although Cherry had counsel at the time, he had no involvement in sending the letter. Additionally, Cherry did not provide E.S.T. with a copy of the letter.

Upon receipt of the letter, the arbitrator consulted the ethics hotline of the Kentucky Bar Association. The KBA responded in writing on October 4, 2012, advising the arbitrator that he did not have a conflict of interest and that he could ethically continue presiding over the case. Unhappy with the KBA opinion, on November 6, 2012, Cherry wrote a second letter, *ex parte*, to the arbitrator. She demanded to know if the arbitrator had any other connections to the father of opposing counsel. On December 3, 2012, the arbitrator recused himself because he did not want to continue dealing with Cherry's persistent accusations. He advised the parties either to engage another arbitrator or to return to the circuit court. The effect of the withdrawal was the suspension of the post-arbitration proceedings.

On February 13, 2013, E.S.T. filed a motion for the court to sanction Cherry pursuant to Kentucky Rule[s] of Civil Procedure (CR) 11. It asked for reimbursement for the arbitration costs and attorney's fees. It also asked the court to dismiss the action. On February 28, 2013, E.S.T. filed a motion to adopt the findings and award entered by the arbitrator. In an order entered on March 22, 2013, the court declined to impose sanctions, but it awarded E.S.T. the monetary relief which it had requested. Additionally, it allowed Cherry's counsel to withdraw from representation.

Cherry filed a motion to vacate the order. The court denied the motion and granted E.S.T.'s motion to adopt the findings of the arbitrator on May 21, 2013. This appeal followed.

We first note that Cherry's brief does not set forth any legal authority as mandated by CR 76.12(4)(c)(v) (arguments must be supported by ample references to legal authority). *See also Harris v. Commonwealth*, 384 S.W.3d 117, 130-31 (Ky. 2012) (It is not the function or responsibility of the court to research and argue for a party). Litigants who proceed *pro se* are not held to the same standards as licensed attorneys; nonetheless, they are still required to follow the civil rules. *Watkins v. Fannin*, 278 S.W.3d 637, 643 (Ky. App. 2009). Because there is only one issue in this case, we have elected to address the merits of Cherry's appeal despite the deficiencies with respect to the civil rules.

Cherry argues that her conduct did not rise to the level of egregious behavior so as to warrant CR 11 sanctions. This argument is moot. In its order of March 22, 2013, the trial court stated that it "makes no findings or conclusions regarding CR 11 sanctions. However, the Court does find that Susan Cherry abused the process of the Court-ordered arbitration in this matter and therefore orders Ms. Cherry to reimburse" E.S.T for expenses and attorney's fees resulting from the arbitration. Therefore, the issue before us is whether the trial court erred by awarding the costs and fees to E.S.T.

The trial court is afforded "wide latitude" when awarding attorney's fees. *Gentry v. Gentry*, 798 S.W.2d 928, 938 (Ky. 1990). When a party's "conduct and tactics . . . waste the court's and attorneys' time," attorney's fees are warranted. *Id.* We may only reverse if the court abused its discretion. *Id.*

Cherry's *ex parte* contact with the arbitrator was improper. "One-sided contacts between judges and lawyers or *parties* regarding pending and impending cases are prohibited. . . ." *Commonwealth v. Wilson*, 384 S.W.3d 113, 116 (Ky. 2012) (Emphasis added). The arbitrator is not a judge, but this Court has recognized that "an arbitrator's role is functionally equivalent to a judge's role. . . ." *Higdon v. Construction Arbitration Associates*, 71 S.W.3d 131, 132 (Ky. App. 2002) (quoting *Olson v. National Association of Security Dealers*, 85 F.3d 381, 382-83 (8<sup>th</sup> Cir. 1996)).

Cherry does not dispute that she disrupted post-arbitration proceedings by writing letters, *ex parte*, to the arbitrator. Even after the KBA approved the arbitrator's participation in the proceedings, Cherry persisted by writing a second letter. In the trial court's hearing on the motion for sanctions, Cherry adamantly argued that the arbitrator had reached the wrong decision. In her brief, she reiterates that the arbitrator's findings were erroneous. The proper remedy for dissatisfaction with the results of arbitration is review of the award by the courts. *Id.* at 133. Conducting *ex parte* communication with the arbitrator was improper and "condemnable." *Louisville Gas & Electric Co. v. Commonwealth*, 862 S.W.2d 897, 900 (Ky. App. 1993).

We must conclude that by persisting in circumventing our legal procedures, Cherry is responsible for the prolonged post-arbitration proceedings, comprising nearly three years. Therefore, the trial court did not abuse its discretion when it awarded fees to E.S.T.

We affirm the Rockcastle Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Susan Cherry, Pro se  
Stanford, Kentucky

BRIEF FOR APPELLEE:

Brooks Stumbo  
Richmond, Kentucky