

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000245-MR

BOBBY G. MOORE
AND ANNE C. MOORE

APPELLANTS

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 14-CI-00797

CITY OF PADUCAH, KY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, STUMBO, AND VANMETER, JUDGES.

VANMETER, JUDGE: Anne C. Moore (Moore)¹ files this appeal from an order of the McCracken Circuit Court dismissing her appeal. Because we hold that Moore has failed to allege any sufficient grounds for relief and has failed to cite any legal authority, we affirm.

¹ Bobby G. Moore, who was also named as an appellant, has apparently passed away during the pendency of this appeal.

Bobby Moore and Anne Moore owned six structures on six different properties that were adjudged to be public nuisances and destroyed.² This action stems from the City of Paducah's attempt to recoup funds from its liens on those properties. The City of Paducah filed a motion for summary judgment, which the circuit court granted on the grounds that the city appeared to have valid liens. This appeal follows.

The City of Paducah makes the following arguments for why this Court should not consider Moore's appeal: 1) Moore untimely filed her prehearing statement; 2) Moore failed to sufficiently preserve her arguments on appeal in her prehearing statement; and 3) Moore failed to timely file her appellate brief.³

The City of Paducah first argues that Moore's appeal should be dismissed because Moore untimely filed her prehearing statement. Under CR⁴ 76.03(4), an appellant must file a prehearing statement "[w]ithin twenty days after filing the notice of appeal or notice of cross-appeal in the circuit court...." Moore's prehearing statement was originally due on February 25, 2015. The City of Paducah filed its motion to dismiss on March 11, 2015, arguing that the Moore's failure to file a prehearing statement should result in dismissal. On May 11, 2015, Moore filed a motion for additional time to file a prehearing statement. The matter

² Moore apparently did not appeal the administrative determination that these properties were nuisances.

³ The sole issue that was passed to the merits panel in the City of Paducah's motion to dismiss was Moore's alleged failure to join indispensable parties. In a separate order, we have declined to dismiss the City of Paducah's appeal on that basis.

⁴ Kentucky Rules of Civil Procedure.

was heard by a motion panel, which ordered Moore to file a prehearing statement within 15 days of the entry of the order. Moore complied. Since Moore complied with the terms of this Court's August 18, 2015 order, and the City of Paducah has not alleged that it was prejudiced by Moore's noncompliance with the original due date for her prehearing statement, we do not believe that Moore's appeal should be dismissed on this basis.

The City of Paducah also argues that Moore's appeal should be dismissed because she failed to properly preserve the issue in this appeal through her prehearing statement. CR 76.03(8) provides that "[a] party shall be limited on appeal to issues in the prehearing statement except that when good cause is shown the appellate court may permit additional issues to be submitted upon timely motion." This Court has previously stated that the failure to raise an issue in the prehearing statement precludes our review of that issue. *Sallee v. Sallee*, 142 S.W.3d 697, 698 (Ky. App. 2004). Moore's prehearing statement provides that "Appellants believe Paducah and many other areas are suffering from 'cultural inbreeding' which includes love of money, allowing the 'wicked beast' to rule by changing law [and] time [T]his change [is] mentioned in Daniel (Bible) O.T." Under the question "Will the appeal turn on interpretation or application of a particular case or statute?" Moore wrote "Property owners' rights are protected by Ky. And U.S. Constit[u]tions, Bill of Rights." We believe that this statement

satisfies CR 76.03(8), and that the issue presented in Moore's appeal is preserved through the prehearing statement.⁵

Last, the City of Paducah argues that Moore's appeal should be dismissed because Moore untimely filed her brief. CR 76.12(2)(a) provides that "the appellant's brief shall be filed with the clerk of the appellate court within 60 days after the date of the notation on the docket of the notification required by Rule 75.07(6)." Our Supreme Court has noted that "[i]t has been and still is the policy of this court to be rather strict in the enforcement of time requirements prescribed by the rules of procedure." *Louisville Mem'l Gardens v. Commonwealth, Dep't of Transp.*, 579 S.W.2d 618, 619 (Ky. 1979). This Court notified Moore that her brief was overdue on December 7, 2015, and gave Moore 20 days to file her brief. Moore then timely filed what was treated as a motion for additional time, which this Court granted. Moore subsequently untimely filed her brief, two days after the time allotted by this Court. Having considered the matter, we decline to dismiss Moore's appeal on this basis because, again, the City of Paducah has failed to allege that it has been prejudiced in any way by Moore's failure to comply with CR 76.12(2)(a).

However, the City of Paducah is correct that Moore's brief contains no citations to legal authority of any kind. "Our courts have established that an alleged error may be deemed waived where an appellant fails to cite any authority

⁵ Although we ultimately hold that Moore has failed to make a sufficient legal argument on appeal, that is a separate issue from whether Moore preserved her argument through the prehearing statement.

in support of the issues and arguments advanced on appeal.” *Drummond v. Todd Cnty. Bd. of Educ.*, 349 S.W.3d 316, 325 (Ky. App. 2011) (quoting *Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005)).

Even if Moore had not waived appellate review of her arguments, however, we would affirm summary judgment in favor of the City of Paducah. Moore’s sole legal argument seems to be that Building Officials Code Administrators International (BOCA) was influenced by communism and foreign countries, and that this influence persisted in modern property codes. Although there is a fleeting reference to the phrase “eminent domain,” Moore has failed to provide sufficient context to develop any legal argument. As this Court has previously noted, “the judiciary’s conciliatory attitude toward unrepresented parties is not boundless[.]” *Cardwell v. Commonwealth*, 354 S.W.3d 582, 585 (Ky. App. 2011) “[i]t is not our function as an appellate court to research and construct a party’s legal arguments[.]” *Hadley*, 186 S.W.3d at 759. We are not willing to make “guesses” surrounding the exact nature of Moore’s “eminent domain” claim, and so Moore is not entitled to relief on that claim.

In sum, we hold that the City of Paducah was not entitled to a dismissal of Moore’s appeal through Moore’s delay in filing her brief or prehearing statement. We hold that Moore properly preserved the issues in her appeal through her prehearing statement. However, we hold that Moore failed to allege any legal grounds for relief and Moore is not entitled to any relief because she failed to cite any legal authority in her brief.

The McCracken Circuit Court's order granting summary judgment is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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BRIEF FOR APPELLEE:

Geordie Garatt
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