

RENDERED: SEPTEMBER 9, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000462-MR

CLEOPATRA BUCKNER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 13-CI-004873

TERRY L. BRYANT

APPELLEE

OPINION
DISMISSING

** ** * * * * *

BEFORE: CLAYTON, D. LAMBERT AND NICKELL, JUDGES.

D. LAMBERT, JUDGE: Cleopatra Buckner, acting *pro se*, appeals the dismissal of her claim with prejudice by the Jefferson Circuit Court. After reviewing the record, this Court finds inexcusable procedural deficiencies exist and orders dismissal of this appeal.

I. FACTUAL AND PROCEDUAL HISTORY

This case originated as an action for personal injury resulting from an automobile accident. Buckner alleged the Appellee, Terry L. Bryant, negligently initiated a vehicle collision, resulting in injury to her person.

On July 1, 2014, the parties engaged in a successful mediation, culminating in a handwritten settlement agreement drafted by the mediator and signed by the parties and the mediator himself. The terms of this mediated settlement required Buckner to release her claims, and consequently a voluntary dismissal was to be filed with the trial court. The record reflects Buckner's acknowledgment of signing this agreement.

The issue arose when Buckner, apparently not satisfied with the settlement, refused to sign the required releases, arguing that the handwritten settlement agreement prepared by the mediator was not binding on its signatories. On August 6, 2014, Bryant filed a motion to enforce the settlement agreement, and on that same day, counsel for Buckner moved to withdraw. Both motions stemmed from Buckner's refusal to execute the releases. The trial court granted Bryant's motion on August 12, 2014, and directed Buckner to execute the releases within ten days.

After the ten days had lapsed with no action by Buckner, Bryant moved for contempt. In the meantime, the trial court had also granted the motion by Buckner's counsel to withdraw. Buckner opted to proceed *pro se* from that point forward. In response to the motion for contempt, Buckner moved the court

to force Bryant to re-enter settlement negotiations. The court instead granted Bryant's motion for contempt, binding Buckner to the contract she had signed and directed her to execute the necessary documents within seven days. As a means to ensure compliance, the trial court imposed a sanction in the amount of \$100.00 per day for failure to comply after the seven day period had lapsed. To date, Buckner has failed to execute said releases.

On November 20, 2014, Bryant moved to convert the pecuniary sanctions to a bench warrant. The trial court granted such motion in an order entered five days later, and further entered a forthwith order of arrest. The record does not reflect the warrant ever having been served, and Bryant indicated in his brief that the trial court held a telephonic conference with the parties *sua sponte* in lieu of having Buckner arrested.

During the trial court's teleconference with the parties, it indicated that an order dismissing the complaint would be forthcoming, but the court opted to incorporate the language of the settlement agreement into such order verbatim. The trial court entered such an order on February 26, 2015.

This appeal followed. Buckner attempts to challenge the trial court's enforcement of the settlement agreement and its dismissal of Buckner's complaint with prejudice. However, Buckner refused, after repeated warnings from this Court, to file a pre-hearing statement. Her brief likewise contains many procedural deficiencies.

II. ANALYSIS

This Court has previously summarized the need for compliance with appellate procedure, and its own responsibility for insuring such compliance.

It is a dangerous precedent to permit appellate advocates to ignore procedural rules. Procedural rules do not exist for the mere sake of form and style. They are lights and buoys to mark the channels of safe passage and assure an expeditious voyage to the right destination. Their importance simply cannot be disdained or denigrated. Enforcement of procedural rules is a judicial responsibility of the highest order because without such rules substantive rights, even of constitutional magnitude, [...] would smother in chaos and could not survive.

Hallis v. Hallis, 328 S.W.3d 694, 696 (Ky.App. 2010) (internal citations and quotations omitted).

One such procedural rule, Civil Rule 76.03, governs prehearing conferences. CR 76.03(4)(h) requires an appellant to provide “a brief statement of the facts and issues proposed to be raised on appeal, including jurisdictional challenges,” in the prehearing statement. CR 76.03(8) limits the scope on appeal to those issues noted in the prehearing statement: “[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 noted that “[i]t has long been the rule in this Commonwealth that an appellant is limited to arguing the issues listed in his prehearing statement.” *Mullins v. Ashland Oil, Inc.*, 389 S.W.3d 149, 154 (Ky.App. 2012).

In situations presenting this Court with the responsibility to enforce the rules of appellate procedure, precedent authorizes three sanctions for non-compliance. *Elwell v. Stone*, 799 S.W.2d 46, 47 (Ky.App. 1990). The first potential sanction is to ignore the deficiency and review the issue on its merits. The second potential sanction is to strike the brief or its offending portions. The third potential sanction is to review the issues under a much higher standard of review, “manifest injustice.” *Id.*

Buckner made explicit her refusal to comply with this Court’s procedural rules when she moved to forego the prehearing process. This Court’s motion panel denied her motion on June 25, 2015, but later vacated that order on July 31, 2015, ostensibly relieving her of the responsibility of compliance with the proper process. However, the motion panel cautioned her of the option available to this panel, pursuant to CR 76.03(8) and *Sallee v. Sallee*, 142 S.W.3d 697 (Ky.App. 2004), to reject her appeal outright as improperly preserved.

The Supreme Court has explicitly held that “the Court of Appeals has the discretion to address an issue” not raised by parties in the prehearing statements. *American Gen. Home Equity, Inc. v. Kestel*, 253 S.W.3d 543, 550 (Ky. 2008). As such, this Court considers Buckner’s explicit refusal to make even minimal attempts at compliance with appellate procedure an inexcusable act of recalcitrance, her *pro se* status notwithstanding.

We find the issues Buckner attempts to present in her brief are not properly preserved for this Court’s review.

III. CONCLUSION

Based on the foregoing, we hereby order this appeal DISMISSED.

ALL CONCUR.

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