

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

NO. 2017-CA-000865-MR

JAMES FRANCIS AND KERNAL FRANCIS

APPELLANTS

v. APPEAL FROM KNOTT CIRCUIT COURT  
HONORABLE JOHNNY RAY HARRIS, SPECIAL JUDGE  
ACTION NO. 04-CI-00205

ALEX FRANCIS; IDA SUE  
FRANCIS; AND CARTER FRANCIS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: JONES, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: James Francis and Kernal Francis<sup>1</sup> bring this *pro se* appeal from a May 3, 2017, Order and Judgment of the Knott Circuit Court. We affirm.

The parties are adjoining land owners in Knott County and are related.

In 2004, Alex Francis and Ida Sue Francis filed a complaint in the Knott Circuit

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<sup>1</sup> Kernal Francis's first name has been spelled a variety of ways. We shall utilize the spelling as it appeared in the Knott Circuit Court (Action No. 04-CI-00205) and in the previous appeal to this Court (Appeal No. 2012-CA-000834-MR).

Court against adjoining land owners, James and Kernal. Therein, Alex and Ida sought to quiet title to their real property and claimed that James and Kernal committed trespass by removing timber from their property. Both parties asserted ownership of the disputed property. On November 17, 2011, the circuit court rendered summary judgment in favor of Alex and Ida; thereupon, James and Kernal filed an appeal (2012-CA-000834-MR) in the Court of Appeals.

In an unpublished Opinion rendered in Appeal No. 2012-CA-000834-MR on June 13, 2014, the Court of Appeals reversed and remanded the summary judgment of the circuit court. The Court of Appeals concluded that Alex and Ida failed to establish title to the real property; thus, the circuit court erred by rendering summary judgment. In that Opinion, our Court stated:

While this Court is sympathetic to the complexity, confusion, and seemingly endless continuation of this case, we must conclude that the circuit court improperly granted summary judgment. In the absence of proof sufficient to establish Appellees' title to the property, the circuit court should not have entered judgment in favor of Appellees.

Of course, this is not to say that Appellants have superior title to the property. On remand, the circuit court may well reach the same end result. However, before quieting title in Appellees' favor, the court must make findings, based on substantial evidence of record, that Appellees proved title to the disputed property sufficient to quiet title. A survey is not substantial evidence sufficient to prove legal title.

*Francis v. Francis*, No. 2012-CA-000834-MR, 2014 WL 2632526, at \*3 (Ky. App. June 13, 2014).

Upon remand, the circuit court, after conducting a hearing, ordered the parties to submit a chain of title to establish their ownership claim to the disputed property. By Order and Judgment rendered May 3, 2017, the court ruled in favor of Alex and Ida, adjudicating their superior title and ownership of the disputed property. James and Kernal filed a *pro se* notice of appeal on May 17, 2017. Although the notice of appeal fails to specifically set forth the order appealed, it can be determined with reasonable certainty that they appealed from the May 3, 2017, Order and Judgment. *See Ready v. Jamison*, 705 S.W.2d 479, 481-82 (Ky. 1986). Our review proceeds accordingly.

In this appeal, James and Kernal have filed a *pro se* brief. The brief is handwritten and consists of two pages in length. The brief also has three documents attached as an appendix. Most importantly, the brief utterly fails to comply with the requirements of Kentucky Rules of Civil Procedure (CR) 76.12. Besides being difficult to read, the brief does not contain an introduction, statement of points and authorities, statement of the case, an argument, or conclusion. CR 76.12 (4)(c). In fact, the brief fails to cite to the record or to any legal authorities to support James and Kernal's position. The "argument" set out in the brief is both rambling and incoherent. James and Kernal failed to address the findings and

conclusion of law reached by the circuit court. As a result, we are unable to discern any substantive legal issue raised by James and Kernal in this appeal.

Additionally, it does not appear that James Francis and Kernal Francis served their appellants' brief upon Alex Francis, Ida Sue Francis, and Carter Francis in violation of CR 76.12. This defect alone authorizes this Court to dismiss the appeal. *See Vander Boegh v. Bank of Oklahoma, N.A.*, 394 S.W.3d 917, 920-22 (Ky. App. 2013). This could also explain why Alex and Ida did not file an appellee brief as they were unaware of the filing of James and Kernal's brief.

Notwithstanding the procedural deficiencies in this appeal, we note that after remand from this Court in 2014, the circuit court allowed the parties to submit additional evidence into the record and conducted an evidentiary hearing. Our review on appeal of the court's findings of fact is the clearly erroneous standard set out in CR 52.01. Findings may not be set aside by this Court unless clearly erroneous. *Stanford Health & Rehab. Ctr. v. Brock*, 334 S.W.3d 883, 884 (Ky. App. 2010). Any issues of law on appeal are reviewed *de novo*. *Id.*

Based on our review of the record on appeal and the circuit court's Order and Judgment, we conclude that the circuit court's findings are not clearly erroneous nor do we perceive any errors of law. Additionally, we conclude that James and Kernal failed to establish on appeal how the circuit court committed

reversible error regarding the May 3, 2017, Order and Judgment and thus we are bound to affirm same. *See Stuckert v. Keller*, 430 S.W.2d 773, 777 (Ky. 1968); *R.E. Gaddie, Inc. v. Price*, 528 S.W.2d 708, 710 (Ky. 1975).

For the foregoing reasons, the Order and Judgment of the Knott Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

NO BRIEF FOR APPELLEES.

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