

RENDERED: NOVEMBER 1, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000756-MR

TRACY JOHNSON

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 15-CI-00099

PAUL DAVIS RESTORATION & REMODELING
OF ELIZABETHTOWN, INC.; AND
FRANKLIN AMERICAN MORTGAGE COMPANY

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * * **

BEFORE: ACREE, DIXON, AND JONES, JUDGES.

JONES, JUDGE: The Appellant, Tracy Johnson, acting without the assistance of counsel, filed this appeal to challenge various orders entered by the Christian Circuit Court with respect to her claims against Paul Davis Restoration &

Remodeling of Elizabethtown, Inc. (“Paul Davis Restoration”).¹ In some instances, the circuit court dismissed Appellant’s claims; in other instances, it granted summary judgment in favor of Paul Davis Restoration.

Paul Davis Restoration urges us to strike Appellant’s brief based on her failure to comply with the briefing requirements set forth in CR² 76.12 and summarily dismiss this appeal. While we are ordinarily reluctant to impose such drastic sanctions on a *pro se* litigant, they are warranted in this particular instance. After submitting a similarly defective brief, the Court provided Appellant with detailed instructions regarding CR 76.12’s requirements and gave her more than ample time to file a compliant brief. Despite these indulgences, Appellant failed to file a brief that complies with even the Court’s most basic requirements. Appellant’s blatant disregard of our Court rules has overly complicated this appeal and wasted valuable judicial resources. Despite devoting significant time to Appellant’s brief, the Court is unable to identify her assignments of errors, locate where in the record those issues were raised before the circuit court, or identify any legal support for her arguments. The Court has no practical remedy other than to strike Appellant’s brief and dismiss this appeal.

¹ Appellant also named Franklin American Mortgage Company as an appellee; however, it does not appear that any of Appellant’s assignments of error relate to Franklin American Mortgage Company, and it has not tendered an appellee brief as part of this appeal.

² Kentucky Rule of Civil Procedure.

CR 76.12 sets out the requirements for the form and content of briefs filed with this Court. In addition to a number of relatively minor omissions and improper formatting issues (margins, spacing, font size, and the like), Appellant's brief fails to comply with those requirements that are essential for the Court's meaningful review.

Appellant's statement of the case consists of seven single spaced typed pages. In addition to being difficult to follow, the statement appears to go well beyond what is contained in the record below. To be certain, however, the Court would have to review fourteen bound volumes, totaling close to 1,900 pages, review numerous depositions filed of record, and watch several video recordings. This is because Appellant did not comply with the requirement to include *“references to the specific pages of the record, or tape and digital counter number in the case of untranscribed videotape or audiotape recordings . . . supporting each of the statements narrated in the summary.”* CR 76.12(4)(c)(iv) (emphasis added).

Appellant's argument section is equally deficient. CR 76.12(4)(c)(v) requires an argument section “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.”

There are no meaningful citations to authority, no references to the record, and no statement showing that issues were preserved below.

Appellant's blatant disregard of the Civil Rules has frustrated this Court's ability to provide meaningful review. We are unable to articulate Appellant's legal arguments or discern the relief she seeks from this Court relative to this appeal. Indeed, at various points she requests us to take action we lack the jurisdiction to grant such as ordering the Administrative Office of the Courts, which has never been a party to this action, to pay her restitution in the amount of \$100,000.

The Court has provided Appellant with ample opportunity to file a compliant brief. Her refusal to comply with our directives leaves us no choice but to strike her brief and dismiss her appeal.

In sum, while [Appellant] is a *pro se* litigant, that does not exempt [her] from the rules. [She] is bound by the same rules of appellate procedure as [her] opposing counsel and any other party before this court. And it is not as if [Appellant] did not have opportunity to correct these errors. In [her] reply brief, after being made aware of [her] noncompliance, [she] could have supplied this court with sufficient citations to the record and authorities—but [she] did not Therefore, we dismiss [her] appeal for non-compliance with CR 76.12. *Elwell v. Stone*, 799 S.W.2d 46 (Ky. App. 1990)[.]

Koester v. Koester, 569 S.W.3d 412, 415 (Ky. App. 2019).

Accordingly, for the foregoing reasons, IT IS ORDERED as follows:

(1) Appellee's motion to strike Appellant's brief and to dismiss the appeal is GRANTED; and (2) this appeal is DISMISSED for Appellant's failure to file a brief that complies with CR 76.12. This renders Appellant's pending motion to stay moot, and the motion is hereby DENIED.

ALL CONCUR.

ENTERED: November 1, 2019

JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Tracy Johnson, *pro se*
Jeffersonville, Indiana

BRIEF FOR APPELLEE, PAUL
DAVIS RESTORATION &
REMODELING OF
ELIZABETHTOWN, INC.:

Daniel N. Thomas
Hopkinsville, Kentucky