

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001051-MR

LINDA CHERYL LANHAM

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BRIAN C. EDWARDS, JUDGE
ACTION NO. 16-CI-005185

THORNTONS, INC.

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * ** * **

BEFORE: COMBS, NICKELL,¹ AND TAYLOR, JUDGES.

COMBS, JUDGE: This is a slip-and-fall case in which Linda Lanham appeals from the summary judgment entered in favor of Thorntons, Inc., by the Jefferson Circuit Court. The trial court granted summary judgment on the basis that there was no evidence to support a negligence claim. Thorntons has filed a motion to

¹ Judge C. Shea Nickell concurred in this opinion prior to being sworn in as a Justice with the Supreme Court of Kentucky. Release of this opinion was delayed by administrative handling.

strike Lanham's brief and to dismiss this appeal. After our review and careful consideration, we are compelled to grant Thorntons's motion.

In her deposition, Lanham explained the events leading to this action. We recapitulate her chronology. On the morning of October 21, 2015, she drove to the Thorntons gas station located at Outer Loop and National Turnpike in Louisville to re-fuel her car. Lanham had visited this Thorntons location before. She parked at a fuel pump, exited the car, and made her way across the parking lot. She was wearing flip-flops and was carrying her wallet and keys. Lanham remembers seeing several red concrete poles at the station's doors. She indicated that the walkway in front of the doors was poured concrete and that it contrasted in hue with the dark pavement of the parking lot. Lanham said that the weather was nice that morning and that the sidewalk and parking lot were dry and free of obstruction. Lanham said that as she approached the sidewalk, she "tripped, stumbled, hit my head on the brick." Lanham indicated that she was looking straight ahead and that she was undistracted. A video recording of the incident was captured by a Thorntons surveillance camera, but it was not preserved.

On October 19, 2016, Lanham filed a personal injury action against Thorntons seeking damages suffered as a result of her fall. The complaint was drafted by her spouse as her "Non-attorney Representative." (Several months later, the court ordered Lanham's spouse to cease drafting pleadings, answering

discovery, presenting oral arguments, or otherwise representing his wife in the proceeding.) The trial court denied Thorntons's subsequent motion to dismiss. Thorntons then answered the complaint and denied liability.

Following a period of discovery, Thorntons filed a motion for summary judgment on May 2, 2018. Thorntons argued that it was entitled to judgment as a matter of law because Lanham could produce no evidence to support her allegation that it had breached its duty of care or that its negligence caused her injuries. Thorntons pointed to Lanham's testimony indicating that she was undistracted, that her way was unimpeded, and that she simply tripped on an intact sidewalk. Lanham did not respond.

The trial court granted the motion in an order entered on June 15, 2018, concluding that "Thorntons breached no duty to [Lanham] by failing to warn her of the existence of a curb in its parking lot." Lanham filed a timely notice of appeal on July 10, 2018.

On July 26, 2018, we returned Lanham's prehearing statement as deficient. We advised Lanham that she must prepare an adequate prehearing statement, serve a copy on opposing counsel, and complete a certificate of service. We gave her ten (10) days to make the necessary corrections. Lanham filed a revised prehearing statement on August 2, 2018, but she did not serve a copy on

opposing counsel as we had directed. The record on appeal was certified on September 12, 2018.

On November 26, 2018, Thorntons filed a motion to dismiss the appeal because Lanham had not filed an appellate brief. On December 7, 2018, Lanham filed a document which we treated as a response to that motion.

On January 8, 2019, Lanham tendered an appellate brief. We returned the brief as untimely and advised that she could file a motion for enlargement of time. On January 16, 2019, Lanham filed that motion and tendered her brief to the Court again.

A motion panel of this Court reviewed the parties' pending motions, responses, and Lanham's tendered brief. In an order entered on March 20, 2019, the panel denied Thorntons's motion to dismiss the appeal and it granted Lanham's motion for additional time in which to file a brief. In the Court's order, the panel observed that the tendered appellate brief did not comply with our civil rules. Lanham was given an additional thirty (30) days in which to file a brief that substantially met the requirements of our appellate practice rules.

In this Court's order, the panel directed that the factual statements narrated in Lanham's statement of the case include "ample references to the specific pages of the record" as required by the provisions of CR² 76.12(4)(c)(iv).

² Kentucky Rules of Civil Procedure.

The panel also directed that the argument portion of her brief include statements with references to the record indicating how and when the issues were preserved for appeal and references to the record for the facts stated in the argument as required by the provisions of CR 76.12(4)(c)(v). The panel explained that only evidence contained in the certified record could be referenced in the brief. Lanham was duly warned that her failure to file a substantially compliant brief within thirty (30) days of our order could result in dismissal of the appeal. The Clerk of Court was ordered to provide Lanham with a copy of the provisions of CR 76.12, a copy of the Court's *Basic Appellate Practice Handbook*, and our checklist for appellant's briefs.

On April 15, 2019, Lanham and her husband, Richard Lanham, filed another appellate brief. Richard Lanham now designated himself as an appellant, *pro se*.

In their argument, the Lanhams noted that Thorntons's video surveillance recording of the incident had not been presented. They requested that the order of the trial court disqualifying Richard as Linda's non-attorney representative be reconsidered and offered an explanation with respect to Linda's failure to respond to Thorntons's motion for summary judgment. They concluded simply that the facts, statements, and record did not warrant entry of judgment in favor of Thorntons.

On June 14, 2019, Thorntons filed a motion to strike the brief and dismiss the appeal. The motion was passed to this merits panel for resolution.

Lanham's appellate briefs do not remotely – much less substantially – comply with the requirements of CR 76.12. (Lanham's husband was not a party to the litigation below, and he is not an appellant in this proceeding. He was ordered by the trial court **not** to participate in this litigation in any representative capacity.) Pursuant to the provisions of CR 73.02(2), where a party fails to comply with the appellate rules, we are authorized (among other remedies) to dismiss the appeal, to strike the inadequate briefs, and to impose fines. Both tendered briefs were gravely deficient despite this Court's clear directives and instructions to Lanham. Therefore, we are compelled to dismiss the appeal.

We have provided Lanham with several resources explaining in detail the requirements of our appellate practice rules. The provisions of CR 76.12(4)(c)(iv) require the inclusion of a “chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal.” The final filed appellant's brief does not contain the required procedural history nor a summary of the facts. There are no references to the specific pages of the record as required by the rule and as emphasized by our order of March 20, 2019. There are no statements with references to the record indicating how and when the issues were preserved for appeal, nor are there references to the record

for the facts stated in the argument as required by the provisions of CR 76.12(4)(c)(v). The brief wholly fails to set forth any arguments explaining what specific errors that Lanham believes were made by the trial court. This Court granted great latitude and direction to Lanham to guide and direct her in the proper preparation of her brief. However, there is very little – if anything – that has complied with the requirements of our civil rules. Thorntons pointed out specifically how Lanham’s brief failed to conform to our rules of appellate practice. Nonetheless, Lanham did not correct these deficiencies in her reply brief.

An appellant who seeks our review must ensure that her brief complies with our rules of appellate practice. *Commonwealth v. Roth*, 567 S.W.3d 591 (Ky. 2019). Because Lanham failed to comply with the provisions of CR 76.12(4)(c)(iv) and (v), we grant Thorntons’s motion and order that Lanham’s brief be stricken and that her appeal be, and it hereby is, DISMISSED.

ALL CONCUR.

ENTERED: December 6, 2019

Judge, Court of Appeals

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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