RENDERED: OCTOBER 30, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2020-CA-0428-ME

A.H. APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DERWIN L. WEBB, JUDGE
ACTION NO. 18-J-504222-001

CABINET FOR HEALTH AND
FAMILY SERVICES; C.P., A MINOR
CHILD; AND J.P. APPELLEES

OPINION AND ORDER
DISMISSING

** ** ** ** **

BEFORE: CALDWELL, GOODWINE, AND LAMBERT, JUDGES.

CALDWELL, JUDGE: This is an appeal of a determination by the Jefferson Family Court that a child was abused by the child's parent. The parent had three children, and one of the children, S.H., had reported to a Cabinet for Health and Family Services worker that the mother, A.H., had "smacked her across the face." After hearing testimony, the Jefferson Family Court found the allegation credible

and entered an order for the parent to attend a parenting program, for the children to attend counseling, and for S.H. to consistently attend school. In the recitation completed on the family court form order, the trial court mistakenly put the incorrect child's name as the child found to have been abused.

Having been presented with an appellate brief which is in all ways deficient, we dismiss the appeal and order the Jefferson Family Court to correct the clerical error present in its February 26, 2020 order, in which it shall substitute the correct name of the child it found to have been abused.

ANALYSIS

In the interests of making the breadth of deficiency present here perfectly clear, we will reproduce the Argument section of the Appellant's brief: "There was no evidence that the child had been coached. Her explanation was reasonable under the circumstances." Next, the Conclusion section reads: "The record should be corrected." This is the extent of the argument presented to this Court.

This Court must be presented with a brief which conforms to the minimal requirements of Kentucky Rule of Civil Procedure (CR) 76.12. The brief filed by the Appellant is grossly deficient and this Court will not endeavor to structure, research, and present arguments in place of counsel upon such a failing.

This Court observed in *Hallis v. Hallis*:

At the outset, we note that Vaughn's appellate brief deviates significantly from the format mandated by Kentucky Rule of Civil Procedure (CR) 76.12. In addition to a number of relatively minor omissions and improper formatting decisions we need not detail here, Vaughn's brief includes no citations to the record and no statement of preservation of the issues he raises on appeal. Our options when an appellate advocate fails to abide by the rules are: (1) to ignore the deficiency and proceed with the review; (2) to strike the brief or its offending portions, CR 76.12(8)(a); or (3) to review the issues raised in the brief for manifest injustice only, *Elwell v. Stone*, 799 S.W.2d 46, 47 (Ky. App. 1990).

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." *Louisville and Jefferson County Metropolitan Sewer Dist. v. Bischoff*, 248 S.W.3d 533, 536 (Ky. 2007) (quoting *Brown v. Commonwealth*, 551 S.W.2d 557, 559 (Ky. 1977)). Enforcement of procedural rules is a judicial responsibility of the highest order because without such rules "[s]ubstantive rights, even of constitutional magnitude, . . . would smother in chaos and could not survive." *Id*. Therefore, we are not inclined to disregard Vaughn's procedural deficiencies.

The second option is available to us because CR 76.12(8)(a) says: "A brief may be stricken for failure to comply with any substantial requirement of this Rule 76.12." All of the rules for preparing a brief before this Court are contained in CR 76.12 or rules cited therein. . . .

Failure to comply with CR 76.12(4)(c)(v), Vaughn's most troublesome shortcoming, creates

particular problems. CR 76.12(4)(c)(v) requires that a brief contain:

> An "ARGUMENT" conforming to the statement of Points and Authorities, 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.

Compliance with this rule permits a meaningful and efficient review by directing the reviewing court to the most important aspects of the appeal: what facts are important and where they can be found in the record; what legal reasoning supports the argument and where it can be found in jurisprudence; and where in the record the preceding court had an opportunity to correct its own error before the reviewing court considers the error itself. The parties, when acting *pro se*, or their attorneys who appear before us have typically spent considerable time, sometimes even years, creating and studying the record of their case. On the other hand, the record that arrives on the desk of the judges of the reviewing court is entirely unknown to them. To do justice, the reviewing court must become familiar with that record. To that end, appellate advocates must separate the chaff from the wheat and direct the court to those portions of the record which matter to their argument. When appellate advocates perform that role effectively, the quality of the opinion in their case is improved, Kentucky jurisprudence evolves more confidently, and the millstones of justice, while still grinding exceedingly fine, can grind a little faster.

But the rules are not only a matter of judicial convenience. They help assure the reviewing court that the arguments are intellectually and ethically honest. Adherence to those rules reduces the likelihood that the

> advocates will rely on red herrings and straw-men arguments—typically unsuccessful strategies. Adherence enables opposing counsel to respond in a meaningfully way to the arguments so that dispute about the issues on appeal is honed to a finer point.

328 S.W.3d 694, 695-97 (Ky. App. 2010) (footnotes omitted).

As referenced in the *Hallis* Opinion, we have several options available when presented with a deficient brief. The breadth of the deficiency we are presented with in this case calls for what is arguably the most sweeping remedy, striking the brief, necessitating dismissal of the appeal.

> The . . . brief in this case plainly failed to comply with these requirements. Under CR 76.12(8)(a), we exercise our discretion to strike the . . . brief, which necessarily requires that we also dismiss the . . . appeal.

Commonwealth v. Roth, 567 S.W.3d 591, 593 (Ky. 2019) (footnote omitted).

We choose the strict remedy of striking the brief and dismissing the appeal, in part, because there was ample opportunity for counsel to cure the deficiencies in the Appellant's brief. The Cabinet in its brief pointed out the deficiencies, giving counsel for the Appellant an opportunity to attempt to cure the deficiencies in the reply brief. Instead, the Appellant filed no reply brief at all. *See Roth*, *supra*, at 594-95. Such choice proves costly in this instance as we elect to strike the noncomplying brief and dismiss this appeal.

We do, however, order the Jefferson Family Court to amend the narrative portion of its order to reflect the name of the child it actually did find had been abused by the mother, A.H., finding such error is clerical in nature.

> Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

CR 60.01.

CONCLUSION

Having found that the Appellant's brief is grossly non-compliant with CR 76.12, we hereby strike the brief and dismiss the appeal. We do order the Jefferson Family Court to correct its order to reflect the name of the child it found was abused, to wit, S.H.

ALL CONCUR.

ENTERED: October 30, 2020

JUDGE, COURT OF APPEALS

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