Missouri Court of Appeals

Southern District

Division Two

STATE OF MISSOURI, ex rel. Attorney General JOSHUA D. HAWLEY,	)	
Plaintiff-Respondent,	)	No. SD34916
	)	Filed: January 11, 2018
vs.	)	
CALVIN ALLEN,	)	
Defendant-Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY

Honorable Charles D. Curless, Special Judge

APPEAL DISMISSED

Calvin Allen ("Allen"), *pro se* appellant, appeals the judgment of the trial court, in which the trial court sustained the State's "Motion for an Order to Show Cause and for Judgment of Civil Penalties Against Defendant Calvin Allen." The State asserts in its brief that Allen's appeal should be dismissed because of numerous Rule 84.04 violations.[1] We agree and dismiss Allen's appeal.

[1] All rule references are to Missouri Court Rules (2017).

The current appeal is Allen's eleventh before this Court. Out of Allen's ten prior appeals, all[2] were dismissed—save one[3]— due to Allen's non-compliance with the rules, procedures, and laws governing appellate review.

The deficiencies that led to the dismissal of many of Allen's prior appeals now appear in Allen's current brief. We note the most grievous of Allen's violations:

- **Statement of Facts**: Rule 84.04(c) requires that "[t]he statement of facts shall be a *fair* and *concise* statement of the facts *relevant* to the questions presented for determination *without argument*." (Emphasis added). In Allen's attempt at facts, apocryphally styled "Statement of Uncontroverted Facts," argument and legal conclusions are embedded in a rambling 21-page recitation of nearly the entire underlying hearing, violating Rule 84.04(c)'s "concise," "relevant," and "without argument" mandates. Some meager portions of the hearing escape Allen's recitation—namely, portions he apparently views as contrary to his defense at trial, thus violating Rule 84.04(c)'s "fair" mandate.

- **Points Relied On**: Rule 84.04(d) requires that each point relied on "be in substantially the following form: 'The trial court erred in [*identify the challenged ruling or action*], because [*state the legal reasons for the claim of reversible error*], in that [*explain why the legal reasons, in the context of the case, support the claim of reversible error*].'" None of Allen's five points relied on belie even a token effort at compliance with this mandatory "erred in/because/in that" formula.[4] "Given that a template is specifically provided for in Rule 84.04(d)(1), appellants simply have no excuse for failing to submit adequate points relied on." ***Scott v.***

[2] *See*, ***Allen v. G & J Enterprise***, 856 S.W.2d 347 (Mo.App. S.D. 1993) (appeal dismissed on June 10, 1993, for lack of final judgment); ***McGee v. Allen***, 929 S.W.2d 278 (Mo.App. S.D. 1996) (appeal dismissed on August 29, 1996, for untimely filing of notice of appeal); ***Keiner v. Allen***, SD21727 (appeal dismissed on December 1, 1997, for failure to file record on appeal); ***Estate of Natalia Allen***, SD25946 (appeal dismissed on March 19, 2004, for failure to perfect appeal); ***Hodge v. Ford***, SD27248 (appeal dismissed in unpublished opinion on June 28, 2006, for lack of final judgment); ***Allen v. Director of Revenue***, SD27371 (appeal dismissed on March 2, 2006, for failure to perfect appeal); ***State ex rel. Koster v. Allen***, 298 S.W.3d 139 (Mo.App. S.D. 2009) (appeal dismissed on October 4, 2009, for failure to "substantially" comply with Rule 84.04); ***Allen v. Jones***, SD30834 (appeal dismissed on November 3, 2010, for lack of jurisdiction – no appealable judgment); and ***Allen v. Jones***, SD31011 (motion to file late notice of appeal denied on December 20, 2010). While acknowledging the possibility that there may be other persons with Allen's same first and last name, we note that "Calvin Allen," the appellant in each of these prior cases, utilized the same P.O. Box for address of record as Allen does in the current appeal before us.

[3] *See*, ***Allen v. Director of Revenue***, 211 S.W.3d 209 (Mo.App. S.D. 2007) (reversed and remanded on January 22, 2007, due to an order that was not final).

[4] "The mandatory 'erred in/because/in that' formula of Rule 84.04(d) is grounded in sound policy, including judicial objectivity, judicial economy, and fairness to the parties on appeal. It is in the interests of all concerned that these policy objectives be advanced through compliance with Rule 84.04(d)." ***Nichols v. Belleview R-III Sch. Dist.***, 528 S.W.3d 918, 927 n.15 (Mo.App. S.D. 2017) (internal citation omitted).

King, 510 S.W.3d 887, 892 (Mo.App. E.D. 2017). Further, Rule 84.04(d)(5) requires that "[i]mmediately following each 'Point Relied On,' the appellant . . . shall include a list of cases, not to exceed four, and the constitutional, statutory, and regulatory provisions or other authority upon which that party principally relies." Allen wholly fails to comply with this requirement.

- **Argument Section**: Rule 84.04(e) mandates that "[f]or each claim of error, the argument shall also include a concise statement describing whether the error was preserved for appellate review; if so, how it was preserved; and the applicable standard of review [based on preservation status]." Allen's brief makes cosmetic approaches at this requirement, but in substance, these efforts land well short of compliance.[5]

- **Appendix**: Rule 84.04(h) *requires* the submission of an appendix, which includes the judgment appealed from, "[t]he complete text of all statutes, . . . [and] rules of court . . . claimed to be controlling as to a point on appeal"; it *allows* the inclusion of certain other materials "pertinent to the issues" in the appendix, but the authorized record on appeal is the firm boundary of our consideration—materials cannot be shoehorned into the record via the appendix, and such attempts may be stricken by the reviewing court. ***State ex rel. Greitens v. Am. Tobacco Co.***, 509 S.W.3d 726, 745 n.21 (Mo. banc 2017). Allen does not include the text of any statutes and rules in his appendix, despite the fact that his table of authorities (if relied on as an accurate tally) cites twenty of them. Allen's brief also attempts to rely on exhibits contained in his appendix, but not in the legal file. *See*, ***U.S. Bank v. Lewis***, 326 S.W.3d 491, 495-96 & n.2 (Mo.App. S.D. 2010).

[5] For example, in Allen's Point III, he argues the judgment should be reversed because the trial court "Err[ed]," committed an "Abuse [of] Discretion," and that his defense was "supported with probative force of competent circumstantial facts and testimonial evidence[.]" In the following section, styled "Standard of Review Judgment," he suggests the appropriate standard of review is "de novo," "abuse of discretion," and affirmance "unless there is no substantial evidence to support it, unless it is against the weight of the evidence." His argument thereafter posits that the standard is "clearly erroneous," and that reversal is required because his defense was supported by "competent facts and evidence." In subpoint "i." of this point (*see*, ***Simmons v. McColloch***, 501 S.W.3d 14, 16 (Mo.App. E.D. 2016)), Allen does not succeed (or attempt) at reconciling these disparate standards of review, nor in applying any of them to his alleged claim of error: the trial court's exclusion of what Allen refers to as "Photographs and Police Reports exhibits." While acknowledging his obligation to demonstrate offers of proof as to these exhibits in the underlying hearing, his attempt at fulfilling this obligation is comprised as follows: the "Court shall find the record replete by appellant preserving error by the exclusion of evidence **Photographs and Police Reports** exhibits for this reason, the subpoint shall be sustained, and hold, that the exhibits and proffered testimony were admissible." (Emphasis in original). We note that these exhibits, as best as we can discern their identities, appear only in the appendix, and not in the legal file, in violation of rules and rationales that we discussed at length in ***U.S. Bank v. Lewis***, 326 S.W.3d 491, 495-96 & n.2 (Mo.App. S.D. 2010).

While we sympathize with the burden Allen faces as a *pro se* litigant, he has received prior admonitions from this Court as to the import and substance of the appellate rules and procedures at issue—Allen's current brief does not reflect acquiescence to these admonitions.[6]

Proverbial equality before the law depends on equal enforcement of our Missouri Court Rules, including Rule 84.04. *See*, ***Sullivan v. Holbrook***, 109 S.W. 668, 670 (Mo. 1908). The burden imposed on *pro se* litigants, who are held to the same standard as counsel in complying with Rule 84.04, is the self-same guarantor of equal treatment for *pro se* litigants in our courts. *See*, ***Carden v. CSM Foreclosure Trustee Corp***, 479 S.W.3d 164, 165 (Mo.App. S.D. 2015).

The State requests that Allen's brief be dismissed for non-compliance with Rule 84.04. For the reasons discussed in this opinion, that request is granted. Appeal dismissed.

WILLIAM W. FRANCIS, JR., J. - OPINION AUTHOR

JEFFREY W. BATES, J. - Concur

DANIEL E. SCOTT, J. - Concur

[6] The transcript from the underlying hearing in this matter reveals the following comment from the trial court, after Allen had ignored several rulings: "THE COURT: Honestly. I mean, you seem like a really, really astute fellow and -- you know, but you're just not paying attention." We observe this to be true—in both respects—as to Allen's current appeal.