

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
January 27, 2016 Session

**JAMES BURTON v. FAYE BARNA**

**Appeal from the Chancery Court for Fentress County  
No. 1432 Elizabeth C. Asbury, Chancellor**

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**No. M2015-00132-COA-R3-CV – Filed February 26, 2016**

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Due to the inadequacies of appellant's brief and appellant's failure to provide a transcript or statement of the evidence, we conclude that he has waived consideration of this appeal, and we affirm the judgment of the chancery court.

**Tenn R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

ANDY D. BENNETT, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and FRANK G. CLEMENT, JR., P.J., M.S., joined.

James Burton, Jamestown, Tennessee, Pro Se.

Trudy Bloodworth, Nashville, Tennessee, for the appellee, Faye Barna.

**OPINION**

James Burton has appealed from the trial court's final order entered December 29, 2014, in which the court awarded Faye Barna a judgment against Mr. Burton in the amount of \$1750, awarded Mr. Burton a judgment against Mrs. Barna in the amount of \$2300, taxed court costs to Mr. Burton, and deemed the case closed because there were "no further issues pending in this matter." Mr. Burton has filed a brief which begins as follows:

Dear Your Honors

The question for your review is does Chancellor Asbury, newly on the bench have the right to bend the law for a woman, with a woman lawyer, a woman

judge. Just because Faye Barna and her ex husband had a large log home company in Scott Co., and a Ranch in Fentress Co. I believe this case was handled with extreme prejudice. . . .

Mr. Burton's handwritten brief continues in a stream of consciousness fashion and arguably raises issues regarding a motion for default, an alleged error in the trial court's evidentiary ruling, and a claim for a quantum meruit contract. For the reasons set forth below, we decline to address the issues raised in Mr. Burton's brief.

The Tennessee Rules of Appellate Procedure and the Rules of the Court of Appeals provide rules for appellate practice and guidelines for the form and content of a party's brief. *See* Tenn. R. App. P. 27; *Bean v. Bean*, 40 S.W.3d 52, 53 (Tenn. Ct. App. 2000). Tennessee Rule of Appellate Procedure 27(a) states that the brief of an appellant "shall contain under appropriate headings in the order here indicated," the following:

- (1) A table of contents, with references to the pages in the brief;
- (2) A table of authorities, including cases (alphabetically arranged), statutes and other authorities cited, with references to the pages in the brief where they are cited;
- . . .
- (4) A statement of the issues presented for review;
- (5) A statement of the case, indicating briefly the nature of the case, the course of proceedings, and its disposition in the court below;
- (6) A statement of facts, setting forth the facts relevant to the issues presented for review with appropriate references to the record;
- (7) An argument, which may be preceded by a summary of argument, setting forth:
  - (A) the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record (which may be quoted verbatim) relied on; and
  - (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);
- (8) A short conclusion, stating the precise relief sought.

In addition, the Rules of the Court of Appeals provide the rules for the form and content of the written argument section of the brief. Rule 6(a) provides that the argument for each issue raised shall include:

- (1) A statement by the appellant of the alleged erroneous action of the trial court which raises the issue and a statement by the appellee of any action of the trial court which is relied upon to correct the alleged error, with citation to the record where the erroneous or corrective action is recorded.
- (2) A statement showing how such alleged error was seasonably called to the attention of the trial judge with citation to that part of the record where appellant's challenge of the alleged error is recorded.
- (3) A statement reciting wherein appellant was prejudiced by such alleged error, with citations to the record showing where the resultant prejudice is recorded.
- (4) A statement of each determinative fact relied upon with citation to the record where evidence of each such fact may be found.

TENN. CT. APP. R. 6(a).

We are mindful that Mr. Burton has proceeded pro se in this appeal; however, “we must not allow him an unfair advantage because he represents himself.” *Frazier v. Campbell*, No. W2006-00031-COA-R3-CV, 2006 WL 2506706, at \*3 (Tenn. Ct. App. Aug. 31, 2006) (citing *Irvin v. City of Clarksville*, 767 S.W.2d 649, 651-52 (Tenn. Ct. App. 1989)). Pro se litigants are granted a certain amount of leeway in drafting their briefs, but they are not excused from complying with the same substantive and procedural requirements as represented parties, and they may not shift the burden of litigating their case to the courts or their adversaries. *Hessmer v. Hessmer*, 138 S.W.3d 901, 903-04 (Tenn. Ct. App. 2003).

Mr. Burton's brief is deficient in several respects. First, the brief does not include a table of contents or table of authorities, nor does it include a statement of the issues, statement of the case, or statement of facts. “[A]n issue may be deemed waived when it is argued in the brief but is not designated as an issue in accordance with Tenn. R. App. P. 27(a)(4).” *Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012). Mr. Burton's brief is completely devoid of an argument section, and he fails to cite a single legal authority or provide any appropriate citations to the record. “Courts have routinely held that the failure to make appropriate references to the record and to cite relevant authority in the argument section of the brief as required by Rule 27(a)(7) constitutes a waiver of the issue.” *Bean*, 40 S.W.3d at 55; *see also Newcomb v. Kohler Co.*, 222 S.W.3d 368, 401 (Tenn. Ct. App. 2006) (holding that the failure to cite to any legal authority or to fashion an argument constitutes waiver of an issue); *Messer Griesheim Indus., Inc. v. Cryotech of Kingsport, Inc.*, 131 S.W.3d 457, 474 (Tenn. Ct. App. 2003) (“Failure to cite authority for propositions in arguments submitted on appeal constitutes waiver of the issue.”). In short, Mr. Burton's brief does not comply with Rule 27 of the Tennessee Rules of Appellate Procedure or Rule 6 of the Rules of the Tennessee Court of Appeals in any respect. Moreover, after reading Mr. Burton's brief in its entirety, we are unable to determine the underlying basis for his appeal.

Further complicating our ability to review this appeal is Mr. Burton's failure to provide a transcript or statement of the evidence. The burden is on the appellant to provide this Court with a transcript of the evidence or a statement of the evidence. TENN. R. APP. P. 24(b), (c); *Coakley v. Daniels*, 840 S.W.2d 367, 370 (Tenn. Ct. App. 1992). As we have discussed, "[t]he absence of either a transcript or a statement of the evidence significantly ties the hands of the appellate court." *Chandler v. Chandler*, No. W2010-01503-COA-R3-CV, 2012 WL 2393698, at \*6 (Tenn. Ct. App. June 26, 2012). Our Supreme Court has explained that, "[w]here the record is incomplete and does not contain a transcript of the proceedings relevant to an issue presented for review, . . . an appellate court is precluded from considering the issue." *State v. Ballard*, 855 S.W.2d 557, 560-61 (Tenn. 1993).

Because of the many deficiencies in Mr. Burton's brief and the absence of a transcript or statement of the evidence, we are unable to consider the issues he raises on appeal. Therefore, we affirm the trial court and assess costs to Mr. Burton.

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ANDY D. BENNETT, JUDGE