

FILED

08/28/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 15, 2023 Session

ANTHONY WADE v. BIOBELE GEORGEWILL

**Appeal from the Circuit Court for McMinn County
No. 2022-CV-434 Michael E. Jenne, Judge**

No. E2023-00375-COA-R3-CV

Appellant appeals the trial court's judgment finding that she breached a contract and ordering her to pay \$3,343.10 in contractual damages. On appeal, Appellant has failed to comply with Tennessee Rule of Appellate Procedure 27(a) and Rule 6 of the Rules of the Court of Appeals of Tennessee. Substantive review is also precluded by the lack of a transcript or statement of the evidence as required by Tennessee Rule of Appellate Procedure 24. Accordingly, this appeal is dismissed.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

J. STEVEN STAFFORD, P. J., W.S., delivered the opinion of the court, in which THOMAS R. FRIERSON, II, and KRISTI M. DAVIS, JJ., joined.

Biobele Georgewill, Rossville, Georgia, Pro se.

Anthony Wade, Sweetwater, Tennessee, Pro se.

MEMORANDUM OPINION¹

¹ Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case involves the enforcement of a written contract between Plaintiff/Appellee Anthony Wade (“Appellee”) and Defendant/Appellant Biobele Georgewill (“Appellant”). Pursuant to the contract, which consists of a single paragraph, Appellee was to cut trees, grind tree stumps, and remove debris from Appellant’s property and Appellant would pay \$1,400.00 per eight-hour day, plus costs for stump removal, equipment rentals, and other materials. The parties agree that the purpose of the contract was to have an area on Appellant’s property cleared for the placement of a driveway and a pad for a mobile home. After Appellee had performed two days of work, Appellant terminated the contract. Appellant maintained that Appellee had not made much progress in the two days and she did not know how many more days it would take for him to complete the project. Appellant also alleged that Appellee had not complied with the plan she had provided to him showing which trees to remove and where to place the driveway. There is no dispute that Appellant did not pay Appellee for the two days he worked on her property.

Appellee filed a civil warrant in the McMinn County General Sessions Court (“the general sessions court”) for breach of contract in October 2022. Appellant filed a countersuit for breach of contract, damage to her property, and negligence. In November 2022, the general sessions court entered a judgment for Appellee for \$2,800.00. Appellant then appealed to the McMinn County Circuit Court (“the trial court”). The matter was heard on February 21, 2023, and a judgment in favor of Appellee was entered on February 24, 2023. The trial court found Appellee’s testimony that he had followed Appellant’s instructions in removing the trees to be credible and supported by photographs of the property. Appellant was ordered to pay Appellee \$2,800.00 for two days of work, \$500.00 for equipment rentals, and \$43.10 for materials. This appeal followed.

II. DISCUSSION

Although Appellant has failed to appropriately designate any issues on appeal, from our review the dispositive issue on appeal is whether the trial court erred by granting a judgment against Appellant and dismissing Appellant’s countercomplaint. Unfortunately, our ability to review the merits of this appeal is hindered by the state of the brief submitted by Appellant.

Briefs submitted to this Court are governed by the Tennessee Rules of Appellate Procedure and the Rules of the Court of Appeals of Tennessee. Rule 27 of the Tennessee Rules of Appellate Procedure provides that the brief of the appellant shall contain:

- (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;

(3) A jurisdictional statement in cases appealed to the Supreme Court directly from the trial court indicating briefly the jurisdictional grounds for the appeal to the Supreme Court;

(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.

Tenn. R. App. P. 27. Rule 6 of the Rules of the Court of Appeals of Tennessee provides further guidance for the content of an appellant's argument "in regard to each issue on appeal[,]" requiring:

(1) A statement by the appellant of the alleged erroneous action of the trial court which raises the issue . . . 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. R. Ct. App. 6(a). Rule 6 also provides,

No complaint of or reliance upon action by the trial court will be considered on appeal unless the argument contains a specific reference to the page or pages of the record where such action is recorded. No assertion of fact will be considered on appeal unless the argument contains a reference to the page

or pages of the record where evidence of such fact is recorded.

Tenn. R. Ct. App. 6(b).

The brief submitted by Appellant wholly fails to comply with these requirements. It does not include a table of contents, a table of authorities, a statement of issues presented for review, a statement of the case, a statement of the facts, an argument section containing the applicable standard of review, or a conclusion containing a specific request for relief. Critically, Appellant's brief contains no citation to the record or relevant legal authority and lists no issues to be considered on appeal. Appellant does make two bare references to Tennessee Code Annotated sections 47-18-104 and 47-18-109,² but does not explain how these statutes support her claim for appellate relief.

We recognize that Appellant is proceeding pro se in this appeal and therefore may not be fluent in the Rules of this Court. "Pro se litigants who invoke the complex and technical procedures of the courts assume a very heavy burden." *Clayton v. Herron*, No. M2014-01497-COA-R3-CV, 2015 WL 757240, at *3 (Tenn. Ct. App. Feb. 20, 2015) (quoting *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1989)). However, it is well-settled that, "[w]hile a party who chooses to represent himself or herself is entitled to the fair and equal treatment of the courts, '[p]ro se litigants are not . . . entitled to shift the burden of litigating their case to the courts.'" *Chiozza v. Chiozza*, 315 S.W.3d 482, 487 (Tenn. Ct. App. 2009) (first citing *Hodges v. Tenn. Att'y Gen.*, 43 S.W.3d 918, 920 (Tenn. Ct. App. 2000); and then quoting *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000)). Accordingly, "[p]ro se litigants must comply with the same substantive and procedural law to which represented parties must adhere." *Id.* (citing *Hodges*, 43 S.W.3d at 920–21).

This Court has previously held that "profound deficiencies [like those found in Appellant's brief] render[] appellate review impracticable, if not impossible." *Owen v. Long Tire, LLC*, No. W2011-01227-COA-R3-CV, 2011 WL 6777014, at *4 (Tenn. Ct. App. Dec. 22, 2011) (citing *Missionary Ridge Baptist Church v. Tidwell*, No. 89-356-II, 1990 WL 94707, *2 (Tenn. Ct. App. July 11, 1990) (refusing to rely on the brief of the appellant because it did not contain references to the record either in the statement of facts or the argument section of its brief)). And "[c]ourts 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 v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000) (listing cases).

While we acknowledge that this Court has discretion under Rule 2 of the Tennessee Rules of Appellate Procedure³ to waive the express briefing requirements for good cause,

² These statutes relate to claims for unfair or deceptive acts.

³ That rule provides, in relevant part:

we decline to exercise our discretion in this case. “[T]he Supreme Court has held that it will not find this Court in error for not considering a case on its merits where the plaintiff did not comply with the rules of this Court.” *Bean*, 40 S.W.3d at 54–55 (citing *Crowe v. Birmingham & N.W. Ry. Co.*, 156 Tenn. 349, 1 S.W.2d 781 (Tenn. 1928)).

Moreover, even if we were to overlook the significant deficiencies in Appellant’s brief, there is nothing in the record for us to review. Tennessee Rule of Appellate Procedure 24 requires that the appellate record contain, among other things, a “transcript or statement of the evidence or proceedings, which shall clearly indicate and identify any exhibits offered in evidence and whether received or rejected[.]” Tenn. R. App. P. 24(a). If no transcript is available, Rule 24 provides that “the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant’s recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal.” Tenn. R. App. P. 24(c).

Here, Appellant has provided neither a transcript nor a statement of the evidence. “It is well settled that in cases where no transcript or statement of the evidence is filed, the appellate court is required to presume that the record, had it been properly preserved, would have supported the action of the trial court.” *Short v. Alston*, No. W2022-00666-COA-R3-CV, 2023 WL 5294531, at *3 (Tenn. Ct. App. Aug. 17, 2023) (citing *Fayne v. Vincent*, 301 S.W.3d 162, 169–70 (Tenn. 2009) (“[W]hen an issue of sufficiency of the evidence is raised on appeal, we must presume, in the absence of a record of the proceedings, that the transcript or statement of the evidence, had it been included in the record, would have contained sufficient evidence to support the trial court’s factual conclusions.”); *Reinhardt v. Neal*, 241 S.W.3d 472, 477 (Tenn. Ct. App. 2007) (explaining that in the absence of a transcript or statement of the evidence, the appellate court had to presume that the evidence supported the trial court’s findings and ultimate conclusion that there was a failure of proof); *Outdoor Mgmt., LLC v. Thomas*, 249 S.W.3d 368, 377 (Tenn. Ct. App. 2007) (noting the “conclusive presumption that there was sufficient evidence before the trial court to support its judgment” if no transcript or statement of the evidence is submitted); *Sherrod v. Wix*, 849 S.W.2d 780, 783 (Tenn. Ct. App. 1992) (“This court cannot review the facts de novo without an appellate record containing the facts, and therefore, we must assume that the record, had it been preserved, would have contained sufficient evidence to support the trial court’s factual findings.”)). Appellant’s failure to ensure that an adequate transcript or statement of the evidence was filed constitutes an effective waiver of her right to appeal, particularly where the trial court’s judgment rests on factual findings that we have no way

For good cause, including the interest of expediting decision upon any matter, the Supreme Court, Court of Appeals, or Court of Criminal Appeals may suspend the requirements or provisions of any of these rules in a particular case on motion of a party or on its motion and may order proceedings in accordance with its discretion[.]

Tenn. R. App. P. 2 (listing exceptions not at issue here).

to review. *Chiozza*, 315 S.W.3d at 492. Thus, even if we excused Appellant's inadequate briefing, in the absence of a transcript or statement of the evidence, we would have been required to affirm the trial court's judgment.

Although we appreciate Appellant's disagreement with the trial court's decision, given Appellant's failure to comply with the Tennessee Rules of Appellate Procedure and the Rules of the Court of Appeals of Tennessee, we decline to address the merits of this appeal. *See id.*; *Bean*, 40 S.W.3d at 55. Accordingly, any issues Appellant has attempted to raise are waived and this appeal is dismissed.

III. CONCLUSION

This appeal is dismissed, with costs taxed to Appellant Biobele Georgewill, for which execution may issue if necessary.

s/ J. Steven Stafford
J. STEVEN STAFFORD, JUDGE