

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 29, 2023 Session

**TRICON CONSTRUCTION, INC D/B/A TRICON 3 CONSTRUCTION,
INC. v. MICHELLE PERRY ET AL.**

**Appeal from the Circuit Court for Davidson County
No. 17C2097 Thomas W. Brothers, Judge**

No. M2022-00664-COA-R3-CV

Husband and wife appellants, acting pro se, appeal the trial court's decision to pierce the corporate veil of husband's construction company to hold husband individually responsible for the corporation's breach of contract, as well as the judgment against both husband and wife for contemptuous conduct. We do not reach the merits of the case due to the appellants' failure to comply with the briefing requirements set out in Rule 27 of the Tennessee Rules of Appellate Procedure and Rule 6 of the Rules of the Court of Appeals of Tennessee and dismiss the appeal.

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

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which ARNOLD B. GOLDIN and KENNY ARMSTRONG, JJ., joined.

Jonathan Griese, and Heather Griese, Panama City, Florida, Pro se.

John L. Farringer, IV and Andrea J. Sinclair, Nashville, Tennessee, for the appellees, Michelle Perry and Emerald Resource, LLC.

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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.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

On August 23, 2017, Tricon Construction, Inc. d/b/a Tricon 3 Construction, Inc. (“Tricon”) filed this lawsuit in the Davidson County Circuit Court (“the trial court”), against Emerald Resource, LLC (“Emerald”) and its majority-owner Michelle Perry (together with Emerald, “Appellees”). The complaint asserted that the two entities had entered into a partnership for the purposes of pursuing federal construction contracts, in furtherance of which Emerald had loaned Tricon a total of \$450,000.00 in 2015 and 2016, with repayment of the entire amount due in January 2021. Tricon alleged that its business relationship with a third party had ended as a result of Ms. Perry disclosing Tricon’s confidential financial information in violation of the mutual non-disclosure agreement between the parties. Tricon also alleged that Ms. Perry had assisted a Tricon employee with securing new employment. In its complaint, filed through counsel, Tricon alleged breach of contract, breach of fiduciary duty, intentional interference with a business relationship, and procurement of breach of contract. Tricon sought to pierce Emerald’s corporate veil and recover against Ms. Perry in her individual capacity.

Appellees filed an answer and countercomplaint on October 18, 2017. Therein, Appellees denied each of Tricon’s charges, raised various affirmative defenses, and asserted new claims against Tricon and Jonathon and Heather Griese in their individual capacity (together, “the Grieses” or “Appellants”). Mr. Griese was co-founder, majority shareholder, and president of Tricon; Mrs. Griese was a minority shareholder without voting rights. Appellees alleged that Tricon breached both its contract with and fiduciary duties to Emerald by failing to repay the \$450,000.00 loan and that Tricon’s corporate veil should be pierced to hold the Grieses individually responsible for the debt.

Later, in May 2019, Appellees filed an emergency motion for prejudgment attachment after learning during discovery that the Grieses had sold their property in Tennessee and moved to Florida. The trial court entered an order prohibiting the Grieses from removing any funds located in Tennessee pending its final order. In October 2019, Appellees filed a motion for summary judgment. Following a hearing in November 2019, the trial court granted Appellees’ motion in part and dismissed all of Tricon’s claims.² Thus, the only remaining issues were Appellees’ counterclaim against Tricon and third-party claims against the Grieses.³

Then, Appellees learned in early 2022 that the Grieses had removed over

² The trial court’s ruling on the motion for summary judgment incorporated its oral findings of fact and conclusions of law as included by video recording in the record. Neither this recording nor a transcription thereof was provided in the record on appeal. Appellees filed a conditional motion requesting to correct the record by providing a copy of the video recording, should this Court address the merits of the appeal. By order of January 10, 2023, we reserved ruling on this motion pending oral argument.

³ Appellees later voluntarily dismissed their breach of fiduciary duty claim against Tricon and the Grieses, leaving only the breach of contract and piercing the corporate veil claims for trial.

\$300,000.00 in funds from their Tennessee accounts in violation of the trial court's 2019 order. Appellees filed a motion for contempt and sanctions, seeking a default judgment on their claim for piercing the corporate veil, or to have the Grieses pay the full \$450,000.00 loan amount into the trial court pending a final verdict, as well as attorney's fees. The trial court's February 1, 2022 order finding the Grieses in civil contempt noted that Mrs. Griese had submitted an affidavit that she had returned \$22,000.00 to the accounts, which the trial court credited against the total amount withdrawn.⁴ The Grieses were ordered to deposit the remaining \$283,678.95 into their Tennessee account within ten days of the order or else face incarceration, and to pay \$18,115.27 in Appellees' attorney's fees. The trial court ultimately denied the Grieses' motion to reconsider, alter, or amend the contempt order but did modify the order to remove the order of incarceration. Appellees also received an award of \$15,000.00 in attorney's fees related to the motion to reconsider, alter, or amend, for a total attorney's fee award of \$33,115.27.

Trial was held over several days in April 2022. The trial court issued its final judgment on May 16, 2022. On Appellees' breach of contract claim, judgment was entered against Tricon for the \$450,000.00 loan amount and \$30,744.86 in interest, for a total award against Tricon of \$480,744.86. The trial court found that justice required piercing Tricon's corporate veil as to Mr. Griese, such that the trial court entered judgment against Mr. Griese individually for the debts of Tricon in the amount of \$480,744.86. The trial court declined to hold Mrs. Griese personally liable for Tricon's debt. No further damages were awarded in relation to the contemptuous conduct of the Grieses.

A notice of appeal was filed May 19, 2022. The notice listed as appellants only Jonathan Griese and Heather Griese. The Grieses' trial attorneys filed a notice with this Court that they would not be representing Appellants in this appeal.

II. ANALYSIS

Appellants appeal each aspect of the trial court's ruling, as explained in their brief:

- 1) The judgment in favor of [Emerald] against Tricon for \$450,000.00[;]
- 2) The judgment in favor of [Emerald] against [Mr.] Griese (personally) for piercing the corporate veil for \$450,000.00 plus pre-judgment interest. (Totaling \$480,744.86)[;]
- 3) The contempt judgment ([for] which [Appellants] were assessed Emerald's attorney's fees of \$33,115.27)[; and]

⁴ Appellees' motion for contempt revealed that the three relevant bank accounts belonging to the Grieses had a total balance of \$28,677.31 in June 2019, when the order prohibiting removal of funds was granted, and a total balance of \$15,951.77 in October 2021, indicating a reduction of only \$12,725.54. Pursuant to an order from the trial court after a hearing on the motion for contempt, Appellees filed over 280 pages of financial records showing numerous transactions from June 2019 to the date of the motion, totaling \$305,678.95 in withdrawals, an amount not disputed by the Grieses.

- 4) The original case brought by Jonathan and Heather Griese being prematurely dismissed without a hearing/trial.

Appellees raised an additional issue in their response brief and via a motion to dismiss: that the appeal should be dismissed in its entirety due to Appellants' failure to comply with appellate briefing requirements. We reserved judgment on the motion to dismiss pending oral argument. After further review, we agree that Appellants' failure to comply with the requirements of the Tennessee Rules of Appellate Procedure and the Rules of the Court of Appeals of Tennessee concerning appellate briefs precludes effective review, and we decline to reach the substantive issues.

The Tennessee Rules of Appellate Procedure and the Rules of the Court of Appeals set forth rules regarding appellate practice, specifically, the form and content of a party's brief. Rule 27 of the Tennessee Rules of Appellate Procedure provides that the brief of an appellant shall contain 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;
- (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 Tennessee Rules of the Court of Appeals describes further requirements for the content of the argument "in regard to each issue on appeal." Rule 6 requires:

- (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 further provides that:

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). Thus, a failure to comply with these rules may have significant consequences for appellate litigants.

It appears that Appellants have attempted to comply with the requirements set out in Rule 27 and Rule 6. Their brief does contain a table of contents, a statement of the issues, a general summary of the factual background of the case, and an argument section outlining the aspects of the trial court's decision that Appellants disagree with. Yet Appellants do not provide a statement of the applicable standard of review, a recitation of the case's procedural history, a table of authorities, or a statement of the precise relief sought. Moreover, Appellants fail to include any citation to the record in support of their statement of facts. Indeed, Appellants fail to provide any citation to the record in their brief at all. Critically, Appellants also fail to include any citation to legal authority to support their right to relief.

We recognize that Appellants are proceeding pro se in this appeal and therefore may not be fluent in the Rules of this Court. 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 Appellants’ 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)). When this Court is “placed in the position of having to review volumes of extraneous, unnecessary, and irrelevant filings,^[5] our goal is hindered and the interests of judicial economy are stymied.” *Little v. City of Chattanooga*, 650 S.W.3d 326, 340 (Tenn. Ct. App. 2022) (quoting *Mitchell v. Jackson Clinic, P.A.*, 420 S.W.3d 1, 3 n.3 (Tenn. Ct. App. 2013)), *perm. app. denied* (June 14, 2022); *see also Mabry v. Mabry*, No. 03A01-9106CH207, 1992 WL 24995, at *1 (Tenn. Ct. App. Feb. 14, 1992) (“It is not incumbent upon this Court to sift through the record in order to find proof to substantiate the factual allegations of the parties.”). 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 Procedure⁶ to waive the express briefing requirements for good cause, 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)). Given Appellants’ failure to comply with Rule 27 of the Tennessee Rules of Appellate Procedure and Rule 6 of the Tennessee Rules of the Court of Appeals, we decline to address the merits of this appeal. *See id.* at 55; *Chiozza*, 315 S.W.3d at 492. Accordingly, Appellees’ motion to dismiss is granted.⁷ All other issues are pretermitted.

II. CONCLUSION

⁵ The record in this case consists of over 3,000 pages of technical record and exhibits, five deposition transcripts, and five video recordings of proceedings in the trial court.

⁶ That rule provides, in relevant part:

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).

⁷ Additionally, Appellee’s conditional motion to correct the record is denied as moot.

Based on the foregoing, we dismiss this appeal and remand this cause for all further proceedings as may be necessary and are consistent with this Opinion. Costs are assessed to Appellants Jonathan and Heather Griese, for which execution may issue if necessary.

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