IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 22, 2023 Session

EDWARD RONNY ARNOLD v. MOORE & SMITH TREE CARE, LLC

Appeal from the Circuit Court for Davidson County
No. 22-C2167 Lynne T. Ingram, Judge

No. M2023-00169-COA-R3-CV

This appeal involves a contract for the removal of a tree. The trial court granted a motion to dismiss filed by the defendant tree company. We affirm and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which ARNOLD B. GOLDIN and KENNY W. ARMSTRONG, JJ., joined.

Edward Ronny Arnold, Nashville, Tennessee, *pro se*.

No brief filed on behalf of the appellee, Moore & Smith Tree Care, LLC.

MEMORANDUM OPINION[1]

I. FACTS & PROCEDURAL HISTORY

On August 26, 2022, Edward Ronny Arnold filed a civil warrant against Moore & Smith Tree Care, LLC ("Defendant"), in general sessions court. According to the civil

[1] Rule 10 of the Rules of the Court of Appeals provides as follows:

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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

warrant, the parties had entered into a contract for the removal of a tree at Mr. Arnold's residence. The contract price was $2,400, but the amount would be reduced by $50 if Mr. Arnold paid cash. According to the civil warrant, Defendant's workers cut the tree on July 12 and 13, and Mr. Arnold paid $2,350 in cash for the work; however, the workers left a large pile of debris at the home. The civil warrant alleges that Mr. Arnold received a text message thereafter, informing him that the price for the work had increased by $5,000, but Defendant would reduce that sum to $2,500, which must be paid before the remaining debris would be removed. According to the civil warrant, Mr. Arnold responded with a letter threatening to sue. The civil warrant states that Defendant returned and removed the remaining debris on August 24. However, according to the civil warrant, Mr. Arnold was never provided with any documentation that the additional invoice was cancelled. As such, Mr. Arnold asked the general sessions court "to rule" that his payment of $2,350 "completed" the contract and that Defendant's attempt to increase the amount owed "violated" the contract. The general sessions court entered an order dismissing the case with prejudice and taxing costs to Mr. Arnold. The order simply stated, "The parties agree that defendant will mark paid in full as to services rendered by defendant."

Despite the entry of this order noting the parties' agreement, Mr. Arnold filed a notice of appeal from general sessions court to circuit court. Mr. Arnold did not file a new complaint in circuit court, but he did file a motion to set a trial date. Within that motion, Mr. Arnold described what had occurred in general sessions court as follows:

> The Plaintiff and the Defendant reached an agreement the Plaintiff only owed $2,400.00, reduced to $2,350.00 for payment of cash, for the removal of the one tree and the removal of all debris. The Defendant would provide a statement of the full payment of $2,350.00.

However, Mr. Arnold contended that the order signed by the general sessions court was "not consistent with" the parties' agreement. Just as he did in general sessions court, Mr. Arnold asked the circuit court to "rule" that his payment of $2,350 "completed [his] contractual amount" and that Defendant's attempt to increase the price beyond that amount was "not valid." Mr. Arnold also filed a motion for default judgment, which the trial court denied.

A handwritten "Motion for Dismissal" was purportedly filed on behalf of Defendant. It stated that Defendant expected the case to be dismissed at the upcoming hearing because Mr. Arnold's request had "already been made and honored," as the parties had "already been to court and given [Mr. Arnold] the information he has wanted and requested." In a separate response to the motion for default judgment, Defendant asserted that the parties had reached an agreement before the general sessions court that Defendant "would drop the invoice and wrote Mr. Arnold a statement that the job was considered done and paid in full," and therefore, there was no need for a trial in circuit court, as Mr. Arnold was "not requesting [] any additional items/expenses" than in general sessions

court. Mr. Arnold filed a response, reiterating his request for the circuit court to review "all evidence" and determine whether Defendant's claim to the additional sum of $5,000 was valid.

After a hearing, of which we have no transcript, the circuit court entered an order granting Defendant's motion to dismiss. The order stated that Defendant would remove a branch in an attached photo within two weeks, but the case was otherwise dismissed. Mr. Arnold timely filed a notice of appeal to this Court. The trial court rejected a statement of the evidence submitted by Mr. Arnold and prepared one of its own. According to the trial court's statement of the evidence, Mr. Arnold insisted at the hearing on the motion to dismiss that an issue remained regarding "whether the $5,000.00 increased payment is at issue." However, "[Defendant] testified in open court that [Mr. Arnold] does not owe an outstanding balance on the contract nor on prior invoices[.]"

II. ISSUES PRESENTED

Mr. Arnold lists nine issues for review in his *pro se* brief on appeal:

1. Whether the trial court erred in not understanding civil action *Edward Ronny Arnold v Moore and Smith Tree Care LLC* 22-C2197 is a contract dispute with a Mechanic's Lien?
2. Whether the trial court erred in not understanding the granting of the defendant's motion to dismiss with prejudice violated 26 CFR § 1.166-1 - bad debts?
3. Whether the trial court erred in not understanding the Defendant/ Appellee impeached themselves in providing no evidence the contract was based on an hourly rate. Tenn. R. Evid. 803.
4. Whether the trial court violated Article I, section 8 and Article XI, section 8 of the Tennessee Constitution and U.S. Const. amend. XIV, § 1 right to exclusionary evidence prior to trial in excluding email chains from the technical record?
5. Whether the trial court erred in not understanding the Defendant/ Appellee stated they intended to file the disputed amount as a loss on their 2022 Federal Income Tax which is a violation of 26 CFR § 1.166-1 - Bad debts.
6. Whether the Trial Court erred in filing the Order and Statement of Evidence included inaccurate observations and statements.
7. Whether the Trial Court was prejudiced by civil actions before the Court and the Appellate Court of Tennessee at Nashville.
8. Whether the trial Court violated TENN. R. SUP. CT. 2.9 - EX PARTE COMMUNICATIONS in advising the Defendant/Plaintiff to offer a contract to the Plaintiff/Appellant.
9. Whether the Defendant/Appellee's decision to not respond to the

> Plaintiff/Appellant's brief and the Defendant/Appellee's decision to not respond to the Administrative Order of the Court constitutes an agreement with the Plaintiff/Appellant's brief?

Defendant has not filed a brief on appeal. For the following reasons, we affirm the decision of the circuit court and remand for further proceedings.

III. DISCUSSION

We begin by noting that Mr. Arnold has filed a *pro se* brief on appeal. "*Pro se* litigants who invoke the complex and sometimes technical procedures of the courts assume a very heavy burden." *Whalum v. Marshall*, 224 S.W.3d 169, 179 (Tenn. Ct. App. 2006) (quoting *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988)). As this Court has repeatedly noted,

> Parties who decide to represent themselves are entitled to equal treatment by the court. *Murray v. Miracle*, 457 S.W.3d 399, 402 (Tenn. Ct. App. 2014). The court should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. *Id.* However, the court must also be mindful of the boundary between fairness to the pro se litigant and unfairness to the pro se litigant's adversary. *Id.* While the court should give pro se litigants who are untrained in the law a certain amount of leeway in drafting their pleadings and briefs, it must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe. *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003).

Augustin v. Bradley Cty. Sheriff's Office, 598 S.W.3d 220, 225 (Tenn. Ct. App. 2019). (quoting *Lacy v. Mitchell*, 541 S.W.3d 55, 59 (Tenn. Ct. App. 2016)).

The facts section of Mr. Arnold's brief on appeal begins by citing caselaw regarding damages. He argues that the reasonable cost of "required repairs" may be recovered under Tennessee law and notes that he contracted with a third-party tree service company to remove the tree debris left by Defendant (although Defendant ultimately cleared the debris before the third-party company did). The problem with this argument is that there is nothing in the record to show that Mr. Arnold ever requested an award of damages in the general sessions court or the circuit court. The civil warrant he filed in general sessions court "petition[ed] the court to rule the Defendant's August 4, 2022 text message invoice for a total amount of $7,400.00 to remove one tree violates the signed June 28, 2022 contract for the amount of $2,400.00 and the Plaintiff's cash payment of $2,350.00 on the date of July 13, 2022 completed the Plaintiff's contractual agreement." The general sessions court dismissed the case, stating, "The parties agree that defendant will mark paid in full as to services rendered by defendant." When Mr. Arnold appealed to circuit court,

Defendant moved to dismiss, noting that Mr. Arnold's request for relief had "already been made and honored." Defendant contended that Mr. Arnold was not requesting any additional items or expenses beyond what he sought in general sessions court. Mr. Arnold filed a response, reiterating that he wanted the trial court to "rule" on various issues, but he did not list a damage award as one of those issues. The circuit court did not mention any request for an award of damages in its order of dismissal or its statement of the evidence. Thus, from our review of the appellate record, Mr. Arnold never requested the relief he now seeks on appeal. *See Emory v. Memphis City Sch. Bd. of Educ.*, 514 S.W.3d 129, 146 (Tenn. 2017) ("It has long been the general rule that questions not raised in the trial court will not be entertained on appeal.") (quotation omitted); *Bell v. Todd*, 206 S.W.3d 86, 93 (Tenn. Ct. App. 2005) ("[W]e must decline to consider arguments that were not presented to the court below and that are being raised for the first time on appeal.").

The first of the nine issues designated for review by Mr. Arnold is: "Whether the trial court erred in not understanding civil action *Edward Ronny Arnold v Moore and Smith Tree Care LLC* 22-C2197 is a contract dispute with a Mechanic's Lien?" In the argument section of Mr. Arnold's brief that corresponds with this issue, he asserts that the trial court erred in granting Defendant's motion to dismiss and failing to "adjudicate the contract." However, he does not cite any legal authority for this argument. Therefore, it is waived. *See Hodge v. Craig*, 382 S.W.3d 325, 335 (Tenn. 2012) ("An issue may be deemed waived, even when it has been specifically raised as an issue, when the brief fails to include an argument satisfying the requirements of Tenn. R. App. P. 27(a)(7)."); *Sneed v. Bd. of Pro. Resp. of Supreme Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010) ("It is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.").

The second issue presented by Mr. Arnold is whether the trial court erred "in not understanding the granting of the Defendant's motion to dismiss with prejudice violated 26 CFR § 1.166-1 – Bad Debts." His fifth issue similarly states: "Whether the trial court erred in not understanding the Defendant/Appellee stated they intended to file the disputed amount as a loss on their 2022 Federal Income Tax which is a violation of 26 CFR § 1.166-1 - Bad debts." According to Mr. Arnold's brief, he raises these issues because Defendant "planned to file the disputed amount of $5,000.00 as 'losses' on their 2022 Federal Business Income Tax Return." Again, however, there is nothing in the limited appellate record reflecting these alleged statements about an income tax return, and nothing to indicate that this argument was raised in the trial court. Therefore, we deem these issues waived. *See Emory*, 514 S.W.3d at 146; *Bell*, 206 S.W.3d at 93.

Mr. Arnold's next issue is "[w]hether the trial court erred in not understanding the Defendant/Appellee impeached themselves in providing no evidence the contract was based on an hourly rate. Tenn. R. Evid. 803." For this issue, Mr. Arnold states that two individuals representing Defendant "impeached themselves" during their statements to the

trial court. He then cites Rules of Evidence regarding hearsay in addition to a statute regarding perjury. However, in support of this argument, Mr. Arnold only provides a record cite to "Exhibits Denied by the Trial Court." Again, the trial court did not approve of Mr. Arnold's proposed statement of the evidence, stating that "Appellant has improperly included accurate information from [sic] its Statement of Evidence, and such information must be corrected 'to conform to the truth.' Tenn. R. App. P. 24(e)." Thus, the trial court prepared its own statement of the evidence. Mr. Arnold has attached to his brief on appeal 31 documents that he describes as "EXHIBITS DENIED BY THE TRIAL COURT." However, this Court cannot consider documents attached to a brief that are "not properly included in the appellate record." *Corder v. Corder*, 231 S.W.3d 346, 350 n.1 (Tenn. Ct. App. 2006) (citing Tenn. R. App. P. 24). Because Mr. Arnold only cites to exhibits that, he admits, were denied by the trial court, we cannot address the merits of this issue. "This Court's authority to review a trial court's decision is limited to issues for which it is provided an adequate appellate record." *Wells v. Illinois Cent. R. Co.*, No. W2010-01223-COA-R3-CV, 2011 WL 6777921, at *6 (Tenn. Ct. App. Dec. 22, 2011) (citing *Am. Gen. Fin. Servs., Inc. v. Goss*, No. E2010-01710-COA-R3-CV, 2011 WL 1326234, at * 2 (Tenn. Ct. App. Apr. 7, 2011)). "'Absent the necessary relevant material in the record an appellate court cannot consider the merits of an issue.'" *Id.* (quoting *Flack v. McKinney*, No. W2009-02671-COA-R3-CV, 2011 WL 2650675, at *3 (Tenn. Ct. App. July 6, 2011)).

Mr. Arnold's argument with respect to his next issue is difficult to follow. The issue states: "Whether the trial court violated Article I, section 8 and Article XI, section 8 of the Tennessee Constitution and U.S. Const. amend. XIV, § 1 right to exclusionary evidence prior to trial in excluding email chains from the technical record?" Citing two federal cases involving criminal convictions, Mr. Arnold argues that "exculpatory and impeachment evidence material to guilt or innocence" must be disclosed in advance of trial. However, Mr. Arnold then goes on to complain about the exclusion of emails that were exchanged regarding preparation of the statement of evidence, after the notice of appeal was filed. He also states that the trial court's "denial of exhibits prejudiced the civil action as exculpatory and impeachment evidence was excluded from the technical record." Although he cites the two cases regarding exculpatory evidence in criminal trials, he does not discuss any relevant legal authority that addresses what documents are to be included in an appellate record. As such, we deem this skeletal argument waived as well. *See Lunsford v. K-VA-T Food Stores, Inc.*, No. E2019-01272-COA-R3-CV, 2020 WL 1527002, at *6 (Tenn. Ct. App. Mar. 31, 2020) (quoting *El-Moussa v. Holder*, 569 F.3d 250, 257 (6th Cir. 2009)) ("'Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in [a] skeletal way, leaving the court to put flesh on its bones.'"); *Newcomb v. Kohler Co.*, 222 S.W.3d 368, 400 (Tenn. Ct. App. 2006) ("A skeletal argument that is really nothing more than an assertion will not properly preserve a claim[.]").

The next issue presented by Mr. Arnold is "[w]hether the Trial Court erred in filing the Order and Statement of Evidence included inaccurate observations and statements."

However, this section of his brief contains no citations to the record or to legal authority. Therefore, this issue is also waived. *See, e.g.*, *Gates v. Switzer*, No. M2021-01552-COA-R3-CV, 2023 WL 6296290, at *3 (Tenn. Ct. App. Sept. 27, 2023) ("Wife's arguments on issues four, five, and nine fail to include any citations to the record and are therefore waived pursuant to Rule 27 and Rule 6."); *Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000) ("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.").

The seventh issue presented by Mr. Arnold is "[w]hether the Trial Court was prejudiced by civil actions before the Court and the Appellate Court of Tennessee at Nashville." For this issue, he references other cases "before the circuit courts of Davidson County, Tennessee," which he claims are "shown in briefs to the Appellate Court of Tennessee at Nashville." Again, however, there is nothing in the appellate record to review regarding this issue. It is therefore waived. *See Wells*, 2011 WL 6777921, at *6.

Next, Mr. Arnold questions "[w]hether the trial Court violated TENN. R. SUP. CT. 2.9 - EX PARTE COMMUNICATIONS in advising the Defendant/Plaintiff to offer a contract to the Plaintiff/Appellant." Yet again, Mr. Arnold only cites to "Exhibits Denied by the Trial Court." As such, we cannot review the merits of this issue.

Finally, Mr. Arnold raises an issue regarding "[w]hether the Defendant/Appellee's decision to not respond to the Plaintiff/Appellant's brief and the Defendant/Appellee's decision to not respond to the Administrative Order of the Court constitutes an agreement with the Plaintiff/Appellant's brief?" Mr. Arnold cites no authority in support of this argument, so it is waived. *See Hodge v. Craig*, 382 S.W.3d at 335.

We recognize that Mr. Arnold mentions several other issues throughout his appellate brief that were not designated as issues pursuant to Tennessee Rule of Appellate Procedure 27. Those issues are likewise waived. *See Hodge*, 382 S.W.3d at 335 ("[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).").

IV. CONCLUSION

For the aforementioned reasons, the decision of the circuit court is affirmed and remanded. Costs of this appeal are taxed to the appellant, Edward Ronny Arnold, for which execution may issue if necessary.

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CARMA DENNIS MCGEE, JUDGE