

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs April 3, 2023

FILED
04/25/2023
Clerk of the
Appellate Courts

21ST MORTGAGE CORPORATION v. CATRINA FORD ET AL.

**Appeal from the Circuit Court for Shelby County
No. CT-0146-21 Mary L. Wagner, Judge**

No. W2022-00168-COA-R3-CV

This case involves a dispute over a parcel of real property. Because of the profound deficiencies with Appellants' brief, we dismiss the appeal and remand the case to the trial court for a determination of damages under Tennessee Code Annotated section 27-1-122.

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

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which ANDY D. BENNETT and KRISTI M. DAVIS, JJ., joined.

Catrina Ford (Carter) and Joel Carter, Memphis, Tennessee, Pro se.

Philip L. Robertson, Nashville, Tennessee, for the appellee, 21st Mortgage Corporation.

OPINION

BACKGROUND AND PROCEDURAL HISTORY

On August 29, 2002, Catrina Ford acquired ownership of the real property at issue, 1872 Netherwood Avenue, Memphis, Tennessee, via a warranty deed. That same day, Ms. Ford executed a "Deed of Trust" in which she pledged the property as collateral for a \$54,000.00 promissory note from Residential Funding Company, LLC. In 2012, Ms. Ford quitclaimed the property to Black Men in the Mirror Foundation. However, Black Men in the Mirror Foundation later quitclaimed the property to Ms. Ford and Joel Carter,¹ and the quitclaim deed was recorded in the Shelby County Register's Office.

¹ Mr. Carter was not a signatory on the deed of trust and is apparently only a party in this case as a result of his interest pursuant to this quitclaim deed. All references in this Opinion to Ms. Ford, as they specifically pertain to the trial court litigation and the appellate briefing submitted by her, also technically include Mr. Carter since he was named in this case and is a party to this appeal as a result of being named in the quitclaim deed. Again, Mr. Carter was not a signatory on the deed of trust.

Of note, 21st Mortgage Corporation (“21st Mortgage”) eventually acquired the deed of trust and note related to this case, and Ms. Ford defaulted under the terms of the loan. As a result, 21st Mortgage served a “Notice of Default and Right to Cure Default” on her. Despite being put on notice, Ms. Ford remained in default. On January 4, 2018, Ms. Ford filed for bankruptcy. In July 2018, she filed a motion in the bankruptcy court to surrender the real property at issue and to modify the plan payment. On September 4, 2018, the bankruptcy court entered an “Agreed Order” on the motion, decreeing, among other things, that Ms. Ford surrendered any right, title, and interest in the real property. Moreover, the order stated that 21st Mortgage “may take any steps necessary to collect against [Ms. Ford] or to foreclose on the property.”

Following the entry of the bankruptcy court’s order, 21st Mortgage initiated foreclosure proceedings under its deed of trust. Thereafter, on June 5, 2020, the substitute trustee recorded a “Notice of Sale” in the Shelby County Register’s Office, setting the foreclosure sale for July 9, 2020, at 12:30 p.m. That same day, a copy of the “Notice of Sale” was forwarded to Ms. Ford via U.S. mail. The substitute trustee also published the “Notice of Sale” for the appropriate time period in The Daily News, a Memphis newspaper of general circulation. On July 9, 2020, 21st Mortgage acquired the real property at foreclosure and obtained the title via the “Substitute Trustee’s Deed” which was recorded with the Shelby County Register’s Office on July 16, 2020. 21st Mortgage subsequently served a written demand via certified mail upon Ms. Ford to vacate the property. However, Ms. Ford continued to assert ownership of the property and refused to relinquish possession to 21st Mortgage.

On January 12, 2021, 21st Mortgage filed a complaint against Ms. Ford and Mr. Carter seeking possession of the real property. Ms. Ford filed an answer to the complaint, and on March 17, 2021, 21st Mortgage filed a “Motion for Summary Judgment.” Ms. Ford thereafter filed a pleading titled “Motion to Sue: Wrongful Foreclosure” (“Motion to Sue”). Following a hearing, the trial court denied 21st Mortgage’s motion for summary judgment without prejudice and further directed it to address Ms. Ford’s Motion to Sue with “specific factual citations to the record.” 21st Mortgage renewed its motion for summary judgment on October 5, 2021, and subsequently filed a supplemental response opposing Ms. Ford’s Motion to Sue. Ms. Ford then filed a flurry of motions including a motion for summary judgment.

On January 7, 2022, the trial court conducted a hearing on *all* outstanding motions—including 21st Mortgage’s renewed motion for summary judgment. Thereafter, on January 25, 2022, the trial court entered an order denying all of Ms. Ford’s pending motions and granting 21st Mortgage’s renewed motion for summary judgment. That same day, Ms. Ford filed a motion to recuse or disqualify the trial court judge. Later, on January 28, 2022, Ms. Ford filed a motion to set aside the judgment. By orders entered on February 7, 2022, the trial court denied both of these motions. This appeal followed.

DISCUSSION

At the outset, we find it necessary to address Ms. Ford's brief on appeal, specifically its failure to comply in any manner with Rule 27(a) of the Tennessee Rules of Appellate Procedure. As will be detailed below, we conclude that the extent of the failure of Ms. Ford's brief to comply with Rule 27(a) warrants waiver of the issues and dismissal of the appeal.

Rule 27(a) of the Tennessee Rules of Appellate Procedure sets forth the requirements appellants are to follow regarding the contents of their briefs. Specifically, Rule 27(a) provides that an appellant's brief shall include the following:

- (1) A table of contents, with reference 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 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(a). This Court retains the discretion whether to suspend or relax the requirements set forth in the Tennessee Rules of Appellate Procedure. *Paehler v. Union Planters Nat'l Bank*, 971 S.W.2d 393, 397 (Tenn. Ct. App. 1997). However, we do not find that the present case merits suspension of the applicable briefing requirements.

Upon reviewing Ms. Ford's brief, we find that it is woefully deficient in meeting

practically all of the enumerated requirements set forth in Rule 27(a). “When a party fails to comply with Tenn. R. App. P. 27, this [C]ourt has the authority to dismiss the appeal.” *Riebsame v. Schemel*, No. E2018-01798-COA-R3-CV, 2019 WL 4667586, at *4 (Tenn. Ct. App. Sept. 24, 2019) (citing *Bean v. Bean*, 40 S.W.3d 52, 54–55 (Tenn. Ct. App. 2000); *Watt v. Watt*, No. M2014-02565-COA-R3-CV, 2016 WL 1730659, at *4 (Tenn. Ct. App. Apr. 27, 2016)). “We have previously held that a litigant’s appeal should be dismissed where his brief does not comply with the applicable rules, or where there is a complete failure to cite to the record.” *Commercial Bank, Inc. v. Summers*, No. E2010-02170-COA-R3-CV, 2011 WL 2673112, at *2 (Tenn. Ct. App. July 11, 2011).

The most egregious deficiency in Ms. Ford’s brief lies in the argument portion. As noted previously, Rule 27 requires Ms. Ford to set forth in the argument:

(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 . . . 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).

Tenn. R. App. P. 27(a)(7). Contrary to the requirements set forth by Rule 27(a), the argument contained in Ms. Ford’s brief contains no citations to the record or to appropriate authorities. Moreover, Ms. Ford’s contentions as they pertain to the litany of issues she has raised on appeal are nonsensical, and we are unable to discern the basis on which she is appealing.

We recognize that Ms. Ford has proceeded pro se in this appeal, and “[p]arties who decide to represent themselves are entitled to fair and equal treatment by the courts.” *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003). Nevertheless, we cannot “excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe.” *Id.* “All filers, including pro se filers, must comply with Rule 27’s basic requirements.” *Thomas v. Bank of Am., N.A.*, No. M2015-01849-COA-R3-CV, 2017 WL 2859813, at *3 (Tenn. Ct. App. July 5, 2017) (citing *Murray v. Miracle*, 457 S.W.3d 399, 404 (Tenn. Ct. App. 2014)). Moreover, regardless of Ms. Ford’s pro se status, it is not the role of this Court to “research or construct a litigant’s case or arguments for him or her.” *Sneed v. Bd. of Prof’l Resp.*, 301 S.W.3d 603, 615 (Tenn. 2010). Rather it is Ms. Ford’s responsibility to ensure compliance with Rule 27(a). Where a party fails to set forth a cognizable argument, this Court may deem the argument waived. *See Lacy v. Vanderbilt Univ. Med. Ctr.*, No. M2018-00832-COA-R3-CV, 2019 WL 1450390, at *3 (Tenn. Ct. App. Apr. 1, 2019) (dismissing the appeal because the appellant’s failure to comply with Rule 27 rendered this Court unable to “ascertain the gravamen of her arguments”).

In light of the significant deficiencies with Ms. Ford's brief and her noncompliance with Rule 27(a) of the Tennessee Rules of Appellate Procedure, we conclude that the argument is waived on appeal and that the appeal should be dismissed.

*Whether this Appeal is Frivolous
Within the Meaning of Tenn. Code Ann. § 27-1-122*

In addition to concluding that Ms. Ford has waived argument on appeal based on the failure to comply with Rule 27(a) of the Tennessee Rules of Appellate Procedure, we further conclude that this appeal constitutes a frivolous appeal within the meaning of Tennessee Code Annotated section 27-1-122, which states as follows:

When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include, but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

Tenn. Code Ann. § 27-1-122. For purposes of awarding damages against an appellant, a frivolous appeal is one that is “so devoid of merit that it has no reasonable chance of succeeding.” *Glanton v. Lord*, 183 S.W.3d 391, 401 (Tenn. Ct. App. 2005) (citing *Combustion Eng'g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978)). This Court retains discretion in determining whether to award these damages. *Banks v. St. Francis Hosp.*, 697 S.W.2d 340, 343 (Tenn. 1985).

Based on our findings regarding Ms. Ford's brief and the underlying facts in this record, we conclude that the appeal in this matter is frivolous. Ms. Ford's brief fails to comply with both the spirit and letter of Rule 27(a) of the Tennessee Rules of Appellate Procedure. The deficiencies contained in the brief, especially with respect to the argument, render no ascertainable basis on which we may address the issues raised. Not only is the argument opaque at best, but Ms. Ford provides no citations to the record, nor does she present any applicable law to support her incoherent argument. Because we conclude that Ms. Ford's briefing deficiencies and the underlying facts of this case² left this appeal with no reasonable chance of succeeding, and further, because it appears this appeal was taken solely for delay, 21st Mortgage is entitled to its expenses incurred as a result of this appeal, including, but not limited to, reasonable attorney's fees pursuant to Tennessee Code Annotated section 27-1-122.

² Specifically, we again emphasize that, pursuant to a motion to surrender the real property at issue filed by Ms. Ford in her bankruptcy case, the bankruptcy court entered an order on September 4, 2018, decreeing that Ms. Ford surrendered any right, title, and interest in the real property at issue and further ordered that 21st Mortgage “may take any steps necessary to collect against [Ms. Ford] or to foreclose on the property” pursuant to the deed of trust.

CONCLUSION

Based on the foregoing, we find Ms. Ford's argument on appeal waived and dismiss the appeal. This matter is remanded to the trial court for a determination of 21st Mortgage's damages under Tennessee Code Annotated section 27-1-122.

s/ Arnold B. Goldin
ARNOLD B. GOLDIN, JUDGE