

FILED

10/17/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
September 13, 2023 Session

**STATE OF TENNESSEE v. \$133,429 IN U.S. CURRENCY SEIZED FROM
JONI ASSEFA KILENTON, ET AL.**

**Appeal from the Circuit Court for Fayette County
No. 21-CV-5 J. Weber McCraw, Judge**

No. W2022-01075-COA-R3-CV

This appeal arises from a forfeiture action regarding funds seized during a traffic stop. In a prior appeal, this Court vacated and remanded for entry of an order that complied with Rule 58 and Rule 52.01 of the Tennessee Rules of Civil Procedure. The trial court entered an additional order on remand, and the appellant has again appealed. Due to deficiencies in the appellant's brief on appeal, we conclude that he waived consideration of his issue on appeal and hereby dismiss the appeal.

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

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and ARNOLD B. GOLDIN, J., joined.

Coleman W. Garrett and Philip Logan Wyatt, Memphis, Tennessee, for the appellant, Joni Assefa Kilenton.

Jonathan Skrmetti, Attorney General and Reporter, Andrée S. Blumstein, Solicitor General, and Edwin Alan Groves, Jr., Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTS & PROCEDURAL HISTORY

In 2021, the State of Tennessee filed an in rem petition for forfeiture of \$133,429 in United States currency seized from Joni Assefa Kilenton during a traffic stop. The petition asked the court to declare the currency forfeited, as provided in Tennessee Code Annotated

section 39-11-701, *et seq.*, “as proceeds of criminal activity to be disposed according to the laws of the State of Tennessee.” Mr. Kilenton filed a response and request for return of the property. The trial court held a hearing on the petition, and law enforcement officers testified on behalf of the State. A video recording of the traffic stop was played during the hearing. Mr. Kilenton testified as well. After the hearing, the trial court entered a two-page written order granting the State’s petition for forfeiture, making various findings and ultimately concluding that the State had carried its burden of proof that the currency was “derived from criminal activity.”

Mr. Kilenton appealed to this Court, raising issues regarding a motion to suppress and whether there was sufficient evidence in the record to support the trial court’s determination that the seized funds were derived from criminal activity. *State v. \$133,429 in U.S. Currency*, No. W2021-01005-COA-R3-CV, 2022 WL 1486575, at *4 (Tenn. Ct. App. May 10, 2022). He submitted a statement of the evidence in lieu of a transcript, but the State objected to his statement and submitted an alternative statement of the evidence. The trial court determined that the State’s statement of the evidence was accurate.

On appeal, we did not reach the substantive issues raised by Mr. Kilenton due to “two procedural shortfalls concerning the trial court’s order.” *Id.* First, we concluded that the trial court’s order did not comply with the requirements of Tennessee Rule of Civil Procedure 58 for entry of judgments, as it contained only the judge’s signature with no additional signatures or attached certificate demonstrating compliance with Rule 58. *Id.* at *5. Without an effective final order, we explained, this Court lacked jurisdiction to consider the appeal. *Id.* However, “in the interest of judicial economy,” we identified “a second procedural deficiency with the trial court’s forfeiture order.” *Id.* We stated that the order did not sufficiently explain how the trial court arrived at its legal conclusion that the currency was derived from criminal activity. *Id.* at *6. Specifically, we stated, “what is missing from the trial court’s order is a link connecting the facts to any criminal activity, on Mr. Kilenton’s part, that was the source of the seized funds.” *Id.* Thus, we directed the trial court on remand to “comply with Tennessee Rule of Civil Procedure 52.01 by making sufficient factual findings to support its legal conclusion that the State met its burden of proof in this case to show, by a preponderance of the evidence, that the seized currency was derived from Mr. Kilenton’s engagement in some illegal activity.” *Id.*

On remand, the trial court entered an additional order that complied with Rule 58 and included some additional findings. Mr. Kilenton has appealed once again.

II. ISSUES PRESENTED

On appeal, Mr. Kilenton argues that the trial court failed to make sufficient factual findings to support its legal conclusion that the State met its burden of proof to show that the currency was derived from his engagement in illegal activity. In its posture as appellee, the State argues that this Court should dismiss Mr. Kilenton’s appeal because his brief lacks

appropriate citations to the record and merely presents a skeletal argument for reversing the trial court's forfeiture order. Alternatively, the State argues that the trial court properly granted the forfeiture petition.

III. DISCUSSION

We begin with the State's issue regarding the deficiencies in Mr. Kilenton's brief. Tennessee Rule of Appellate Procedure 27 governs the content of briefs and provides, in pertinent part:

(a) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

...

(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[.]

...

(g) Reference in Briefs to the Record. Except as provided in rule 28(c), reference in the briefs to the record shall be to the pages of the record involved.

(emphasis added). In addition, "internal rules of the intermediate appellate courts state that no trial error will be considered on appeal if briefs do not cite pages of the trial record where the alleged error occurred." Tenn. R. App. P. 27, Adv. Comm'n Cmt. Specifically, Tennessee Court of Appeals Rule 6 provides, in relevant part:

(a) Written argument in regard to each issue on appeal shall contain:

(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.

(b) 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.

(emphasis added).

Here, the argument section of Mr. Kilenton's brief contains no citations to the record. The facts section of his brief contains only a few general references such as "see Ex. 7." A footnote below the facts section states, "All exhibit citations in this section correspond with the numeration of exhibits filed with the original Brief of Respondent-Appellant on 12/02/2021 in Case no. W2021-01005-COA-R3-CV. This Statement of the Facts is identical to the Statement of the Facts in the original Brief of Respondent-Appellant." Notably, however, there are no exhibits appended to Mr. Kilenton's brief in this appeal. To complicate matters further, we note that Mr. Kilenton filed a motion to consolidate the record on appeal with that from the prior appeal, but it was denied six months before he filed his brief in this appeal.

In an effort to determine the exhibits to which Mr. Kilenton's current brief refers, this Court examined the brief he filed in the previous appeal. That brief does have nearly two hundred pages of documents attached to the brief; however, those pages are not separated into enumerated exhibits or identified as such. In fact, the facts section of that brief contains a footnote which states, "Note: The Exhibits cited in this Brief are numbered in accordance with the order that they are listed in Appellant's Statement of the Evidence." Again, the State objected to Mr. Kilenton's statement of the evidence, and the trial court deemed the State's alternative statement to be accurate. Moreover, it appears that Mr. Kilenton's statement of the evidence in the appellate record has no exhibits attached.

We have often noted that "[j]udges are not like pigs, hunting for truffles that may be buried in the record, or, for that matter, in the parties' briefs on appeal." *State ex rel. Comm'r of Dep't of Transp. v. Pagidipati Fam. Gen. P'ship*, No. W2022-00078-COA-R3-CV, 2023 WL 4714915, at *7 (Tenn. Ct. App. July 25, 2023) (quoting *Nunley v. Farrar*, No. M2020-00519-COA-R3-CV, 2021 WL 1811750, at *6 (Tenn. Ct. App. May 6, 2021)). We would further note that this Court should not have to engage in a "wild goose chase" in an attempt to unravel and decipher the citations to the record in the appellant's brief. "This court is 'under no duty to blindly search the record to find . . . evidence,' nor can Appellant shift this burden to us." *Reed v. Cars of Nashville, Inc.*, No. M2021-00854-COA-R3-CV, 2022 WL 774738, at *3 (Tenn. Ct. App. Mar. 15, 2022) (quoting *Pearman v. Pearman*, 781 S.W.2d 585, 588 (Tenn. Ct. App. 1989)). Even if we were to somehow locate the referenced "exhibits," Mr. Kilenton does not include any references to specific page numbers, in violation of the aforementioned rules concerning briefs on appeal. *See*

In re Nevada N., 498 S.W.3d 579, 605 n.16 (Tenn. Ct. App. 2016) (noting that Rule 27 “requires citation to specific page numbers in the record” and concluding that a party violated Rule 27 by “citing generally” to exhibits). Rule 6 clearly provides that “[n]o 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. Ct. App. R. 6.

Ultimately, the State argues that this Court should dismiss Mr. Kilenton’s appeal because his brief “fails to include a single appropriate citation to the appellate record, which spans more than 1,000 pages.” We agree that dismissal is appropriate under these circumstances. “[A]ppellate courts may properly decline to consider issues that have not been raised and briefed in accordance with the applicable rules.” *McCartney v. McCartney*, No. M2020-00703-COA-R3-CV, 2021 WL 3578978, at *4 (Tenn. Ct. App. Aug. 13, 2021) (quoting *Clayton v. Herron*, No. M2014-01497-COA-R3-CV, 2015 WL 757240, at *3 (Tenn. Ct. App. Feb. 20, 2015)). “Courts have routinely held that the failure to comply with even one of the Rule 27 requirements constitutes a waiver of the appellate issue.” *Short v. Alston*, No. W2022-00666-COA-R3-CV, 2023 WL 5294531, at *2 (Tenn. Ct. App. Aug. 17, 2023); *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.”); *Little v. City of Chattanooga*, 650 S.W.3d 326, 348, 353 (Tenn. Ct. App. 2022) (deeming various issues waived for failure to cite to the record); *Cnty. of Sumner v. Kalbes*, No. M2020-01119-COA-R3-CV, 2021 WL 4192319, at *2 (Tenn. Ct. App. Sept. 15, 2021) (“[O]ur courts have routinely held that the failure to make appropriate references to the record as required by Rule 27(a)(7) constitutes a waiver of the issue.”) (quotation omitted). Moreover, “[w]e 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.” *Clayton*, 2015 WL 757240, at *3 (quoting *Commercial Bank, Inc. v. Summers*, No. E2010-02170-COA-R3-CV, 2011 WL 2673112, at *2 (Tenn. Ct. App. July 11, 2011)); *see also Pagidipati Fam. Gen. P’ship*, 2023 WL 4714915, at *7 (“We conclude that Defendant has waived its issues on appeal by failing to properly provide citations to the record in its appellate brief.”).

IV. CONCLUSION

For the aforementioned reasons, this appeal is hereby dismissed. Costs of this appeal are taxed to the appellant, Joni Assefa Kilenton, for which execution may issue if necessary.

CARMA DENNIS MCGEE, JUDGE