

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 16, 2003 Session

EFFIE LOUISE HAYES v. ROGER STRUTTON, ET AL.

**Appeal from the Circuit Court for Hamilton County
No. 03C227 L. Marie Williams, Judge**

FILED OCTOBER 27, 2003

No. E2003-00938-COA-R3-CV

After two adverse decisions in the Hamilton County General Sessions Court and an adverse decision in the United States District Court for the Eastern District of Tennessee, Effie Louise Hayes (“Ms. Hayes” or “Plaintiff”) filed a *pro se* lawsuit in the Hamilton County Circuit Court making essentially the same allegations as in her previous lawsuits. The Circuit Court dismissed that lawsuit after concluding the claims were barred by the doctrine of res judicata. Ms. Hayes appealed that decision to this Court and the judgment of the Circuit Court was affirmed. Ms. Hayes sought further review, but the Tennessee Supreme Court denied her Rule 11 application for permission to appeal. Ms. Hayes then filed the present lawsuit, *pro se*, making the same claims that were made in her previous lawsuits. Once again, the Circuit Court concluded the doctrine of res judicata barred the claims. Ms. Hayes appeals. We affirm the judgment of the Circuit Court and further conclude this appeal is frivolous. We remand this case to the Circuit Court for a determination of damages in accordance with Tenn. Code Ann. § 27-1-122.

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

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, J., and CHARLES D. SUSANO, JR., J., joined.

Effie Louise Hayes, *pro se* Appellant.

Gary E. Lester, Chattanooga, Tennessee, for the Appellees Roger Strutton, Betty Strutton, and Gary E. Lester.

OPINION

Background

On April 6, 1999, Roger and Betty Strutton filed a Detainer Warrant with docket number D441497 in the Hamilton County General Sessions Court against Ms. Hayes. The Struttons sought possession of property located at 1102 Tunnel Boulevard. The Struttons were represented by attorney Gary E. Lester (“Lester”). The Detainer Warrant indicates Ms. Hayes was represented by attorney Randy Russell. A trial took place on June 7, 1999, after which the General Sessions Court Judge entered a judgment for the Struttons restoring them “to the possession of the within described property, for which a Writ of Possession may issue, and court costs are adjudged against” Ms. Hayes. Nothing in the record indicates that this judgment was appealed.

Three days after the General Sessions Court trial, Ms. Hayes filed a separate *pro se* lawsuit against the Struttons for “falsifying a (sic) installment note that was secured by a deed of trust.” This lawsuit was filed in the Hamilton County General Sessions Court and its docket number was 444008. The Struttons filed a motion to dismiss this second lawsuit. The General Sessions Court Judge granted the motion, making specific reference to the first lawsuit by stating: “See case # D441497”. Nothing in the record indicates that this second judgment was appealed.

Sometime during the following year, Ms. Hayes filed a *pro se* lawsuit in the United States District Court for the Eastern District of Tennessee. Ms. Hayes sued as defendants the Struttons and attorney Lester, as well as Mark G. Rothberger, attorney at law, the Honorable John C. Cook, United States Bankruptcy Judge, and the United States Bankruptcy Court. The record on appeal does not contain a copy of the federal court complaint, although the Struttons and Lester claim it is “virtually identical” to the complaint filed in the present case. In any event, the record does contain an Order and Judgment entered by the United States District Court on September 25, 2000, which states:

(1) The motion by defendants Robert Strutton, Betty Strutton, and Gary E. Lester to dismiss the plaintiff’s complaint against them ... is **GRANTED**;

(2) All of the plaintiff’s claims brought against defendants Robert Strutton, Betty Strutton, and Gary E. Lester pursuant to 42 U.S.C. §§ 1982, 1983, 1984, and 1985 and Tenn. Code Ann. §§ 39-14-117, 39-11-710, 39-11-711, and 39-11-712 are **DISMISSED WITH PREJUDICE** under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted;

(3) The only viable claim which remains before the Court for adjudication is the plaintiff’s tort claim of common law fraud being asserted against defendants Robert Strutton, Betty Strutton, Gary E.

Lester, and Mark G. Rothberger. The common law fraud claim is **DISMISSED WITHOUT PREJUDICE**. This claim is predicated solely on the substantive law of the State of Tennessee and this Court declines to exercise supplemental jurisdiction over the plaintiff's common law fraud claim pursuant to 28 U.S.C. § 1367.... This is a **FINAL JUDGMENT**¹

The judgment of the federal district court apparently was appealed to the United States Court of Appeals for the Sixth Circuit, but the appeal was later stricken by Ms. Hayes' attorney who had been retained following entry of the adverse judgment in the district court.

On April 6, 2001, Ms. Hayes proceeded to file yet another *pro se* lawsuit. This next lawsuit was filed in the Hamilton County Circuit Court. Ms. Hayes sued the Struttons, as well as attorneys Lester and Rothberger. Although it is extremely difficult, if not impossible, to ascertain the exact basis for Ms. Hayes' lawsuit, it appears several years ago Ms. Hayes filed for bankruptcy after purchasing the property at issue. At one point in her complaint Ms. Hayes claims she satisfied the debt on the property through the bankruptcy proceedings. In the next paragraph, however, she claims she attempted to reopen her bankruptcy "so she could finish paying what she owed." Later in the complaint, Ms. Hayes claims the Struttons and attorney Lester "defrauded her out of her property by hook and crook by Fraud in Insolvency by intentionally falsifying any writhing (sic) or records relating to the property...." It is not at all clear why a claim was asserted against attorney Rothberger who apparently had some connection to the bankruptcy litigation. In her complaint, Ms. Hayes asserted claims pursuant to Tenn. Code Ann. §§ 39-11-710 - 712, 42 U.S.C. §§ 1982 - 1985, and for fraud. After a motion for judgment on the pleadings was filed, the Circuit Court dismissed the complaint after concluding all of Plaintiff's claims for statutory violations were barred by the doctrine of res judicata in that these very same claims against the same parties were dismissed with prejudice by the United States District Court for the Eastern District of Tennessee. The Circuit Court also concluded the fraud claim was barred by the doctrine of res judicata in that a "court of competent jurisdiction entered judgments on the merits concerning the same cause of action and involving the same parties in the General Sessions Court of Hamilton County, Tennessee in cases number D441497 and 444008." Ms. Hayes then appealed the dismissal of her complaint to this Court. On June 11, 2002, this Court affirmed the dismissal of Plaintiff's claims. *See Hayes v. Strutton*, No. E2001-01765-COA-R3-CV, 2002 Tenn. App. LEXIS 414 (Tenn. Ct. App. June 11, 2002). Ms. Hayes then filed a Rule 11 application for permission to appeal to the Tennessee Supreme Court, which was denied on October 7, 2002.

Ms. Hayes apparently was dissatisfied with both judgments of the Hamilton County General Sessions Court, the judgment of the United States District Court for the Eastern District of Tennessee, the judgment of the Hamilton County Circuit Court, the judgment of this Court, as well as the Tennessee Supreme Court's refusal to grant her permission to appeal. Accordingly, she filed

¹ Since the Final Judgment makes no reference to Ms. Hayes' claims against the United States Bankruptcy Court or Judge Cook, we can only assume these defendants were dismissed from the lawsuit prior to entry of the final judgment.

the present lawsuit in the Hamilton County Circuit Court making the very same allegations as set forth in the previous lawsuits. The defendants in the present case are the Struttons and attorney Lester (“Defendants”). On March 18, 2003, the Circuit Court entered an order after concluding the doctrine of res judicata barred the present lawsuit inasmuch as all of the issues between these same parties had already been addressed. The Trial Court then stated:

Defendants’ counsel also asks the Court to bar Ms. Hayes from filing additional lawsuits on this subject matter. On the authority of *Alton Dixon v. Nike, Inc.*, the Court ORDERS Ms. Hayes shall not file additional lawsuits arising out of this same subject matter until payment of court costs incident to her prior filings and this filing. This Order does not preclude an appeal of the Court’s ruling in this case.

Ms. Hayes now appeals the dismissal of her second complaint filed in the Circuit Court. Defendants argue the appeal is frivolous.

Discussion

The factual findings of a trial court are accorded a presumption of correctness, and we will not overturn those factual findings unless the evidence preponderates against them. *See* Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). With respect to legal issues, our review is conducted “under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts.” *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

In her brief on appeal, Ms. Hayes sets forth no law or argument explaining to this Court why the Trial Court erred when it concluded every single one of her claims was barred by the doctrine of res judicata. The same defect was apparent in her previous appeal to this Court wherein we stated:

[A]t no point in her brief does she set forth an argument which articulates the basis for her assertions that the Court erred as to these issues nor does she cite any authority which would support such assertions. As recognized in *State v. Brown*, 795 S.W.2d 689 (Tenn. Crim. App. 1990) at page 698:

Failure of a defendant to cite authority for propositions in his argument on appeal constitutes waiver of the issue. *State v. Houston*, 688 S.W.2d 838 (Tenn. Crim. App. 1984); *Moorman v. State*, 577 S.W.2d 473 (Tenn. Crim. App. 1978). The brief of the appellant should contain an argument setting forth the contentions of the appellant with respect to the

issues presented with citations to the authorities and appropriate references to the record.

Accordingly, we find that Ms. Hayes has waived those issues set forth in her brief as to Mr. and Ms. Strutton and Mr. Lester.

Hayes v. Strutton, 2002 Tenn. App. LEXIS 414, at * 6 (Tenn. Ct. App. June 11, 2002).

For the same reasons, in the present case we conclude Ms. Hayes has once again waived these issues and the decision of the Trial Court must be affirmed.

The sole issue raised by Defendants is their claim that this appeal is frivolous pursuant to Tenn. Code Ann. § 27-1-122. We could not agree more. These same issues between these same parties have been litigated over and over again. Although difficult to articulate, it is quite apparent that the first judgment of the Circuit Court holding Ms. Hayes' claims were barred by res judicata is, for purposes of this second Circuit Court lawsuit, res judicata. In other words, the judgment that the claims are barred by res judicata is, in and of itself, res judicata. We agree this appeal is frivolous.

Very recently, the Middle Section of this Court reached a similar conclusion after concluding the plaintiff in that case had filed the appeal "for the purpose of re-litigating claims that had already been finally resolved." This Court stated:

Parties should not be forced to bear the cost and vexation of baseless appeals. *Davis v. Gulf Ins. Group*, 546 S.W.2d 583, 586 (Tenn. 1977); *Jackson v. Aldridge*, 6 S.W.3d 501, 504 (Tenn. Ct. App. 1999); *McDonald v. Onoh*, 772 S.W.2d 913, 914 (Tenn. Ct. App. 1989). Accordingly, in 1975, the Tennessee General Assembly enacted Tenn. Code Ann. § 27-1-122 to enable appellate courts to award damages against parties whose appeals are frivolous or are brought solely for the purpose of delay. Determining whether to award these damages is a discretionary decision. *Banks v. St. Francis Hosp.*, 697 S.W.2d 340, 343 (Tenn.1985).

A frivolous appeal is one that is devoid of merit, *Combustion Eng'g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978), or one that has no reasonable chance of succeeding. *Davis v. Gulf Ins. Group*, 546 S.W.2d at 586; *Jackson v. Aldridge*, 6 S.W.3d at 504; *Industrial Dev. Bd. v. Hancock*, 901 S.W.2d 382, 385 (Tenn. Ct. App. 1995)....

Young v. Barrow, No. M2001-00876-COA-R3-CV, 2003 Tenn. App. LEXIS 678, at ** 16-17 (Tenn. Ct. App. Sept. 16, 2003).²

Ms. Hayes' appeal is devoid of any merit and had no reasonable chance of succeeding. Accordingly, the Struttons and Lester are entitled to damages in accordance with Tenn. Code Ann. § 27-1-122.

Conclusion

The judgment of the Trial Court is affirmed. This cause is remanded to the Trial Court for the assessment of damages in accordance with Tenn. Code Ann. § 27-1-122 and for any further proceedings as may be required, including collection of the costs below. The costs on appeal are assessed against the Appellant Effie Louise Hayes.

D. MICHAEL SWINEY, JUDGE

² The time in which to file a Rule 11 application for permission to appeal to the Tennessee Supreme Court had not yet expired in the *Young* case at the time the Opinion in the present case was released.