

Dismiss and Opinion Filed November 17, 2015



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-14-01278-CV

FREDERICK BROWN, Appellant

V.

**NATIONSTAR MORTGAGE, LLC, NATIONSTAR MORTGAGE PROPERTIES, LLC,
A.J. LOLL, A.R. TUCKER, AL BROADWAY, ANDREW CLINE, ANDREW FIN,
ANTHONY H. BARONE, ANTHONY SANTINI, ANTON S. KOTTENBROOK,
BRENT STUART, BRIAN BOLES, DWAYNE SMITH, GARY DELEMBO,
DARYL MCLEOD, GREG HARNISCH, BRIAN HARVEY, HEATHER T. HENDRIX,
JAMES ADELTE, AND JAMES J. LAUX, Appellees**

**On Appeal from the 95th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-10-03045-D**

MEMORANDUM OPINION

Before Justices Lang, Evans, and Whitehill
Opinion by Justice Whitehill

Appellant Frederick Brown sued appellees for fraud, tortious interference with business relations, and predatory lending practices. Two appellees filed a motion to compel arbitration and stay the litigation, and the trial court granted that motion. Over four years later, appellees moved to reopen and dismiss the case, and the trial court granted that motion as well. Brown perfected an appeal pro se and filed an appellant's brief. We notified him that his brief was deficient and instructed him to file an amended brief that complied with the Texas Rules of Appellate Procedure. We warned Brown that his failure to file a brief that complied with the

appellate rules within ten days could result in dismissal of his appeal without further notice. He filed an amended brief. Because Brown's amended brief is also deficient, we dismiss this appeal. *See Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 895 (Tex. App.—Dallas 2010, no pet.).

Our notice specifically informed Brown that his original brief was defective because it lacked record references throughout. *See* TEX. R. APP. P. 38.1(d), (g), (i) (requiring record references in support of the statement of the case, the statement of facts, and the argument). We are not responsible for searching the record for facts that may be favorable to a party's position. *Bolling*, 315 S.W.3d at 895. If we were to do so, we would be acting as advocates, not judges. *Id.* Thus, “[i]f record references are not made or are inaccurate, misstated, or misleading, the brief fails.” *Id.* at 896.

Brown's amended brief is defective. Specifically, the argument section of Brown's amended brief contains no record references. Accordingly, under Rule 38.1(i) and *Bolling*, his brief fails, and dismissal is appropriate.

We note that the appellate record in this case consists of one volume of clerk's record and one volume of reporter's record. The reporter's record is from a hearing on the motion to compel arbitration. If there was a hearing on appellees' motion to reopen and dismiss the case, we do not have a reporter's record from that hearing. In the argument section of his brief, Brown states that he will not cite the reporter's record on file with us because he believes it is a “fictitious” reporter's record.¹ Nevertheless, Brown was still obliged to provide appropriate record references to support the assertions of fact he did make in his argument. *See* TEX. R. APP. P. 38.1(i). He provided none—not even to the clerk's record.²

¹ Brown filed a motion and an amended motion to “quash” this reporter's record. We denied the amended motion.

² Brown filed a reply brief. The reply brief's argument section also contains no record references.

Because Brown failed to comply with the appellate rules' briefing requirements after having been given the opportunity to do so, we dismiss his appeal. *See Bolling*, 315 S.W.3d at 897.

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/Bill Whitehill/

BILL WHITEHILL
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

Frederick Brown, Appellant

No. 05-14-01278-CV V.

Nationstar Mortgage, LLC, Nationstar
Mortgage Properties, LLC, A.J. Loll, A.R.
Tucker, Al Broadway, Andrew Cline,
Andrew Fin, Anthony H. Barone, Anthony
Santini, Anton S. Kottenbrook, Brent Stuart,
Brian Boles, Dwayne Smith, Gary Delembo,
Daryl Mcleod, Greg Harnisch, Brian Harvey,
Heather T. Hendrix, James Adelt, and James
J. Laux, Appellees

On Appeal from the 95th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DC-10-03045-D.
Opinion delivered by Justice Whitehill.
Justices Lang and Evans participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED**.

It is **ORDERED** that appellees Nationstar Mortgage, LLC, Nationstar Mortgage Properties, LLC, A.J. Loll, A.R. Tucker, Al Broadway, Andrew Cline, Andrew Fin, Anthony H. Barone, Anthony Santini, Anton S. Kottenbrook, Brent Stuart, Brian Boles, Dwayne Smith, Gary Delembo, Daryl Mcleod, Greg Harnisch, Brian Harvey, Heather T. Hendrix, James Adelt, and James J. Laux recover their costs of this appeal from appellant Frederick Brown.

Judgment entered November 17, 2015.