

AFFIRM; and Opinion Filed March 27, 2018.



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

No. 05-17-00445-CV

GEORGE MORRIS, Appellant

V.

SOUTHERN JOURNEYS OF TEXAS, Appellee

**On Appeal from the County Court at Law No. 7
Collin County, Texas
Trial Court Cause No. 007-02709-2016**

MEMORANDUM OPINION

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

Appellant George Morris appeals the trial court's dismissal of his lawsuit for want of prosecution. In four issues, he claims the trial court erred in denying his motion for continuance, dismissing his case while discovery was pending, improperly awarding attorney's fees to appellee Southern Journeys of Texas, and failing to reinstate his case and reverse the attorney's fees award. We affirm the trial court's order of dismissal.

BACKGROUND

Morris, a pro se litigant, sued Southern Journeys in justice court seeking damages for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (2015), arising from four telemarketing calls he received in June 2015. Following a bench trial, the justice court ruled in favor of Southern Journeys and ordered that Morris take nothing.

Morris appealed to the county court at law, which notified the parties by letter dated November 28, 2016 that the case was set for trial on February 2, 2017. On January 24, 2017, Morris filed a Request for Rescheduling due to an out-of-state work-related scheduling conflict with the trial date. He also filed a Motion for Discovery, seeking leave to serve interrogatories and requests for production and admission. Morris did not request a hearing on either motion. On January 25, 2017, Southern Journeys filed a response requesting the trial court to deny the Request for Rescheduling because Morris failed to plead the necessary averments and counsel for Southern Journeys already made arrangements to travel from Georgia to Texas to defend the case. Southern Journeys further requested its travel expenses and \$2000 in attorney's fees incurred in defending the case.

On February 2, 2017, the trial court entered an order denying Morris's Request for Rescheduling and awarding Southern Journeys \$2000 in attorney's fees.¹ On February 8, 2017, the trial court entered an order of dismissal in which the court granted an oral motion to dismiss made by Southern Journeys in open court and, finding that Morris failed to appear after being duly noticed of trial, dismissed the case for want of prosecution. On February 21, 2017, Morris filed a Request for New Trial, which the trial court denied by order dated February 23, 2017.

IMPROPER BRIEFING

A pro se litigant is held to the same standards as licensed attorneys and must comply with applicable laws and rules of procedure. *Strange v. Cont'l Cas. Co.*, 126 S.W.3d 676, 677-78 (Tex. App.—Dallas 2004, pet. denied). And, as at trial, a pro se appellant must properly present his case on appeal. *Id.* at 678. The rules of appellate procedure require an appellant's brief to contain “a clear and concise argument for the contentions made, with appropriate citations to authorities and

¹ There is no reporter's record of the February 2, 2017 proceedings, but the docket sheet reflects the case was called, Morris failed to appear to urge his motion for continuance, and counsel for Southern Journeys was to provide a “dismissal for want of prosecution.”

to the record.” TEX. R. APP. P. 38.1(i). An issue on appeal unsupported by argument or citation to legal authority or the record presents nothing for us to review. *Strange*, 126 S.W.3d at 678. We have neither a right nor an obligation to search a record for facts or research relevant law to support an appellant’s position; to do so would “improperly transform the court from neutral adjudicator to advocate.” *Lau v. Reeder*, No. 05-14-01459-CV, 2016 WL 4371813, at *2 (Tex. App.—Dallas Aug. 16, 2016, pet. denied) (mem. op.); *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 895 (Tex. App.—Dallas 2010, no pet.).

Morris filed a brief that was not in compliance with the rules of appellate procedure. By letter, we notified him the brief was deficient and instructed him to file, within ten days, an amended brief correcting the noted deficiencies. Morris filed an amended brief, but it failed to correct several of the noted deficiencies. The amended brief lacks citations to legal authority and the record in support of Morris’s argument, and the argument is little more than a statement of his issues. Because Morris’s issues are unsupported by argument or appropriate citation to legal authority and the record, he has preserved nothing for our review. *Strange*, 126 S.W.3d at 678. Nevertheless, we will consider his issues individually to the extent possible.

MOTION FOR CONTINUANCE

In his first issue, Morris argues the trial court erred in denying his Request for Rescheduling. Texas Rule of Civil Procedure 251 governs motions for continuance and provides that a motion shall not be granted except for sufficient cause supported by affidavit, consent of the parties, or by operation of law. Tex. R. Civ. P. 251; see *In re A.M.*, 418 S.W.3d 830, 838 (Tex. App.—Dallas 2013, no pet.); *Strong v. Strong*, 350 S.W.3d 759, 762 (Tex. App.—Dallas 2011, pet. denied). Morris’s Request for Rescheduling was not supported by affidavit, Southern Journeys did not consent to a continuance, and Morris has not explained how a continuance was required by operation of law. Accordingly, Morris has failed to preserve any error from the trial

court's denial of his request. *See In re A.M.*, 418 S.W.3d at 838; *Strong*, 350 S.W.3d at 762. We overrule his first issue.

DISMISSAL

In his second issue, Morris contends that the trial court abused its discretion when it dismissed his case for want of prosecution while discovery was pending. Morris's amended brief provides no argument on this issue, but claims the dismissal harmed him and violated his due process rights.

Texas Rule of Civil Procedure 165a authorizes a trial court to dismiss a case for want of prosecution on the "failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice." TEX. R. CIV. P. 165a; *Villarreal v. San Antonio Truck & Equip.*, 994 S.W.2d 628, 630 (Tex. 1999). We will not reverse a dismissal unless, as a matter of law, the trial court clearly abused its discretion. *Lopez v. Harding*, 68 S.W.3d 78, 80 (Tex. App.—Dallas 2001, no pet.); *Manning v. North*, 82 S.W.3d 706, 709 (Tex. App.—Amarillo 2002, no pet.).

The trial court notified Morris by letter dated November 28, 2016 that the case was set for trial on February 2, 2017. Morris, however, did not seek leave to serve discovery until approximately one week before trial, the same day he filed a deficient motion for continuance. Further, Morris did not seek a hearing on either the motion for continuance or discovery. Given these facts, we cannot conclude the trial court abused its discretion in dismissing the case after Morris failed to appear for trial or to urge his motion for continuance. We overrule Morris's second issue.

ATTORNEY'S FEES

In his third issue, Morris contends the trial court "improperly awarded unreasonable and unjustified lawyer's fees" to Southern Journeys. Morris claims Southern Journeys failed to notify him that it was seeking attorney's fees and the trial court failed to properly determine the amount

of the award, both as required under Texas Rule of Civil Procedure 42. *See* TEX. R. CIV. APP. 42(h)(1), (i). Rule 42, however, governs motions for an award of attorney’s fees in certified class actions and does not apply in this case. *See* TEX. R. CIV. APP. 42. Accordingly, we overrule Morris’s third issue.

MOTION TO REINSTATE

In his fourth issue, Morris complains of the trial court’s “failure to overturn the decision and reverse the awarding of attorneys fees . . .,” and alleges Southern Journeys engaged in improper ex parte communication with the trial court. Morris provides no further argument or citation to either legal authority or the record. Because he failed to adequately brief the issue on appeal, Morris has preserved nothing for our review. *Strange*, 126 S.W.3d at 678. Further, to the extent he is complaining the trial court erred in overruling his Request for New Trial, we disagree. To seek reinstatement following dismissal of his case, Morris was required to file a verified motion setting forth the grounds supporting reinstatement. *See* TEX. R. CIV. P. 165a(3). Appellant’s Request for New Trial was unverified; therefore, we conclude the trial court did not abuse its discretion in denying his request. We overrule Morris’s fourth issue.

We affirm the trial court’s order of dismissal.

/Ada Brown/

ADA BROWN
JUSTICE

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

JUDGMENT

GEORGE MORRIS, Appellant

No. 05-17-00445-CV V.

SOUTHERN JOURNEYS OF TEXAS,
Appellee

On Appeal from the County Court at Law
No. 7, Collin County, Texas

Trial Court Cause No. 007-02709-2016.

Opinion delivered by Justice Brown;
Justices Lang and Whitehill participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee SOUTHERN JOURNEYS OF TEXAS recover its costs of this appeal from appellant GEORGE MORRIS.

Judgment entered this 27th day of March, 2018.