Concurring Opinion Filed November 16, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00239-CV

ECO PLANET, LLC AND M. JAMAL MEZANAZI, Appellants
V.
ANT TRADING AND THABED AKEED, Appellees

On Appeal from the 95th District Court
Dallas County, Texas
Trial Court Cause No. DC-17-03276

CONCURRING OPINION

Before Justices Osborne, Partida-Kipness, and Pedersen, III[1]
Concurring Opinion by Justice Osborne

I disagree with the majority's conclusion that appellants Eco Planet, LLC and M. Jamal Mezanazi's brief substantially complies with the briefing standards set out in Texas Rule of Appellate Procedure 38.1. Because I conclude that it does not, I would affirm the judgment based on their failure to comply with Rule 38.1.

While I generally disfavor resolving an appeal based on an appellant's inadequate briefing, in this case, appellants fail to provide us with argument,

[1] Justice Pedersen did not participate in oral argument but participated in the resolution of this appeal. Justice Carlyle participated in oral argument but did not participate in the resolution of this appeal.

analysis, or authorities that might make their complaints viable. As a result, addressing the merits of the appeal requires us to improperly step outside our role as a neutral arbiter and advocate on behalf of appellants. In order to promote transparency as to the standards applied with respect to the briefing rules, I detail my reasoning in this concurring opinion.

I. FAILURE TO COMPLY WITH BRIEFING RULES

In issues one and two, Eco Planet and Mezanazi argue: (1) "the trial court err[ed] by adjudicating the [i]nstant [l]awsuit because it is an impermissible attack of a prior judgment"; and (2) "the trial court err[ed] by not finding the issue of membership in Eco Planet [] was barred by the doctrine of collateral estoppel." ANT Trading and Akeed respond, in part, that Eco Planet and Mezanazi fail to brief the standard of review.

A. Applicable Law

Appellate courts have the discretion to waive issues for inadequate briefing. *Fredonia State Bank v. Gen. Am. Life Ins.*, 881 S.W.2d 279, 284 (Tex. 1994); *see also Horton v. Stovall*, 591 S.W.3d 567, 569–70 (Tex. 2019) (per curiam).

An appellant has the burden to present and discuss his assertions of error in compliance with the appellate briefing rules. *Amir-Sharif v. Tex. Dep't of Family & Protective Servs.*, No. 05-13-00958-CV, 2015 WL 4967239, at *2 (Tex. App.—Dallas Aug. 20, 2015, pet. denied) (mem. op.); *Ayati-Ghaffari v. Gumbodete*, No. 05-14-01019-CV, 2015 WL 4482158, at *3 (Tex. App.—Dallas July 23, 2015, no

pet.) (mem. op.); *Cruz v. Van Sickle*, 452 S.W.3d 503, 511 (Tex. App.—Dallas 2014, no pet.). The Texas Rules of Appellate Procedure have specific requirements for briefing. TEX. R. APP. P. 38; *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 895 (Tex. App.—Dallas 2010, no pet.). These rules require appellants to state their complaint concisely; to provide understandable, succinct, and clear argument for why their complaint has merit in fact and in law; and to cite and apply law that is applicable to their complaint along with record references that are appropriate. TEX. R. APP. P. 38.1(f), (h), (i); *RSL Funding, LLC v. Newsome*, 569 S.W.3d 116, 126 (Tex. 2018); *see also Bolling*, 315 S.W.3d at 895. This requirement is not satisfied by merely making brief, conclusory statements unsupported by legal citations. *Canton-Carter v. Baylor Coll. of Med.*, 271 S.W.3d 928, 931 (Tex. App.—Houston [14th Dist.] 2008, no pet.). And references to sweeping statements of general law are rarely appropriate. *Bolling*, 315 S.W.3d at 896.

Appellate "briefs are meant to acquaint the court with the issues in a case and to present argument that will enable the court to decide the case," so substantial compliance with the rules is sufficient. TEX. R. APP. P. 38.9; *see also Horton*, 591 S.W.3d at 569. But, only when an appellate court has been provided with proper briefing may it discharge its responsibility to review the appeal and make a decision that disposes of the appeal one way or the other. *Jones v. Am. Real Estate Inv.*, No. 05-19-00546-CV, 2020 WL 5834301, at *1 (Tex. App.—Dallas Oct. 1, 2020, no pet. h.) (mem. op.); *Bolling*, 315 S.W.3d at 895. Appellate courts are not responsible for

identifying possible trial court error, searching the record for facts that may be favorable to a party's position, or doing the legal research that might support a party's contentions. *Jones*, 2020 WL 5834301, at *1; *Bolling*, 315 S.W.3d at 895. Were an appellate court to perform the fundamental research to support a party's argument, even for a pro se litigant untrained in law, the appellate justices would be abandoning their roles as judges by becoming advocates for that party. *Jones*, 2020 WL 5834301, at *1; *Bolling*, 315 S.W.3d at 895. If an appellate court must speculate or guess about what contentions are being made, then the brief fails. *Bolling*, 315 S.W.3d at 896.

Appellate courts have the authority to request additional briefing on an unbriefed issue that was fairly included in or inextricably entwined with a briefed issue. *St. John Missionary Baptist Church v. Flakes*, 595 S.W.3d 211, 216 (Tex. 2020). While Rule 38.9's discretionary language is tempered by Rule 44.3's mandate that an appellate court "must not affirm or reverse a judgment or dismiss an appeal for formal defects or irregularities in appellate procedure without allowing a reasonable time to correct or amend the defects or irregularities," courts of appeals nevertheless retain their authority and discretion to deem an unbriefed point waived in lieu of requesting additional briefing. *Horton*, 591 S.W.3d at 569–70; *St. John*, 595 S.W.3d at 215. *Compare* TEX. R. APP. P. 38.9 *with id.* 44.3. As a result, sometimes appellate courts give an appellant a chance to rebrief. *See, e.g.*, *In re N.E.B.*, 251 S.W.3d 211, 212 (Tex. App.—Dallas 2008, no pet.). And, sometimes

they do not. *See, e.g.*, *RSL Funding*, 569 S.W.3d at 126; *Apex Fin. Corp. v. Loan Care*, No. 05-17-00855-CV, 2018 WL 6710102 (Tex. App.—Dallas Dec. 20, 2018, pet. denied) (mem. op.); *CreditOne, LLC v. Brown*, No. 05-07-01592-CV, 2009 WL 2462770, at *2 (Tex. App.—Dallas Aug. 13, 2009, no pet.) (mem. op.) (affirming dismissal for want of prosecution because one independent ground was not adequately briefed); *Herrell v. Allstate Ins. Co.*, No. 05-08-00442-CV, 2009 WL 1912687 (Tex. App.—Dallas July 6, 2009, no pet.) (mem. op.) (waiving appellant's sole issue on appeal for inadequate briefing and not mentioning any opportunity to rebrief); *Kasper v. Meadowwood Ranch Estate, Inc. Prop. Owners Ass'n*, No. 05-07-00982-CV, 2008 WL 3579379, at *2 (Tex. App.—Dallas Aug. 15, 2008, no pet.) (mem. op.) (affirming summary judgment because one independent ground was inadequately briefed); *Brown v. RREEF Mgmt. Co.*, No. 05-06-00942-CV, 2007 WL 1829725, at *1 (Tex. App.—Dallas June 27, 2007, pet. denied) (mem. op.) (waiving but also alternatively affirming on merits).

The application of the briefing rules should encourage fairness to the parties. The interests of justice, which demands that cases be decided on the merits when technical deficiencies in briefing can be easily corrected must be balanced against the importance of Rule 38.1, which both requires the appellant to inform the court of the basis for the relief sought **and** to put an appellee on notice of the errors claimed and the basis for such errors so the appellee may adequately defend the ruling on

appeal. *See Horton,* 591 S.W.3d at 570; *Reule v. M&T Mortg.*, 483 S.W.3d 600, 620 (Tex. App.—Houston [14th Dist.] 2015, pet. denied).

When deciding whether an appellant's brief is deficient, an appellate court does not adhere to any rigid rule about the form of a brief. *Reule*, 483 S.W.3d at 620. Rather, it must construe the briefing rules reasonably, yet liberally, so that the right of appeal on the merits is not lost by imposing requirements not absolutely necessary to effect the purpose of the rule. TEX. R. APP. P. 38.9; *Rep. Underwriters Ins. Co. v. Mex-Tex., Inc.*, 150 S.W.3d 423, 427 (Tex. 2004). An appellate court's duty does not extend to making every possible argument for the parties. *See Pacheco v. Rodriguez*, 600 S.W.3d 401, 407 (Tex. App.—El Paso 2020, no pet.). In fairness to all of the parties, appellate courts must enforce the briefing rules. *See Reule*, 483 S.W.3d at 620; *see also* TEX. CODE JUD. CONDUCT, Canon 3B(9) *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. B ("A judge should dispose of all judicial matters promptly, efficiently and fairly.").

If an appellate court can conclude a brief complies with the Texas Rules of Appellate Procedure, it submits the appeal for review and decision on the merits. If an appellate court cannot, it may dismiss the appeal or affirm the judgment as it is authorized to do. *See, e.g.*, TEX. R. APP. P. 42.3; *Apex Fin. Corp.*, 2018 WL 6710102, at *3; *Bolling*, 315 S.W.3d at 895–96.

B. Eco Planet and Mezanazi's Brief is Inadequate

There is no doubt that appellate judges can reasonably disagree about what constitutes inadequate briefing. And a court's concluding that an issue is waived due to inadequate briefing is a harsh outcome. But in our adversary system, appellate review is based on the "party presentation principle," which means that courts rely on the parties to frame the issues for decision and courts are assigned the role of neutral arbiter with respect to the matters the parties present. *See Greenlaw v. U.S.*, 554 U.S. 237, 243 (2008).

Briefing rules must be about fairness to all the parties. *See Reule*, 483 S.W.3d at 620 (in fairness to all parties, appellate courts must enforce briefing rules). As a result, courts should apply these procedural rules in a manner that seeks to balance several needs and obligations, such as: (1) an appellant's right to appeal balanced against the prejudice to the appellee in having to respond to and defend against an ambiguous claim of error; (2) an appellate court's obligation to remain a neutral arbiter and to dispose of all judicial matters fairly and efficiently—while avoiding any desire to remedy the deficiencies in an appellant's brief thereby giving the appellant an unfair advantage—balanced against the court's responsibility to construe briefing rules liberally so that an appellant's right to appeal is not lost by waiver; and (3) the court's need for judicial efficiency in the disposition of cases

through the effective use of the court's limited resources[2] balanced against other mandates, including the duty to respect stare decisis.

Eco Planet and Mezanazi's brief does not contain a clear and concise argument for their contentions with appropriate citations to authorities.[3] First, it is

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[2] Angela Morris, *Expect Delays in Court: Administrators Warn of Case Backlogs if Texas Forces 5% Budget Cuts*, TEXAS LAWYER, (Oct. 14, 2020), https://www.law.com/texaslawyer/2020/10/14/expect-delays-in-court-administrators-warn-of-case-backlogs-if-texas-forces-5-budget-cuts/.

[3] With respect to issue one, the entirety of Eco Planet and Mezanazi's argument is as follows:

> A collateral attack on a judgment is defined as "an attempt to avoid the binding force of a judgment in a proceeding not instituted for the purpose of correcting, modifying, or vacating the judgment, but in order to obtain some specific relief which the judgment currently stands as a bar against." *Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005). Moreover, a declaratory judgment action "may not be used to collaterally attack, modify, or interpret a prior judgment." *Dallas* [*Cty.*] *Tax Collector v. Andolina*, 303 S.W.3d 926, 930 (Tex. App.—Dallas 2010, no pet. []).
>
> The Instant Lawsuit fits squarely in the definition set out by the Texas Supreme Court in *Prostok*. Indisputably, one of the final, adjudicated facts of the Underlying Judgment by which the parties were bound is the fact that Nazem Miznazi is NOT a member of Eco Planet, LLC. In direct contradiction of that fact, however, the Instant Lawsuit sought for the trial court to declare that Nazem Miznazi is one of the "Managing Members" of Eco Planet, LLC. Accordingly, the specific relief sought by the Instant Lawsuit defies a final, adjudicated fact by which Akeed and ANT are bound, and the Instant Lawsuit is collateral and impermissible.
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> Appellees may argue that a collateral attack is appropriate because the Underlying Judgment is void for lack of subject matter jurisdiction since Jamal allegedly lacked standing to pursue the Underlying Lawsuit. Although void judgments may be collaterally attacked, a judgment assailed by a collateral attack is presumed valid. *In re A.G.G.*, 267 S.W.3d 165, 169 (Tex. App.—San Antonio 2008, pet. denied); *In re* [*Gen.*] *Motors Corp.*, 296 S.W.3d 813, 829 (Tex. App.—Austin 2009, orig. proceeding). Moreover, extrinsic evidence may not be used to establish a lack of jurisdiction. *Id.* To overcome the presumption of validity, the challenger must prove the judgment is void on its face. *In re A.G.G.*, 267 S.W.3d at 169. The presumption survives even if the judgment is insufficient on its face to establish the court's jurisdiction so long as it does not affirmatively show a lack of jurisdiction. *In re* [*Gen.*] *Motors Corp.*, 296 S.W.3d at 829.
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> The Underlying Judgment is presumed valid and contains nothing on its face affirmatively showing a lack of subject matter jurisdiction. To the contrary, the Underlying Judgment affirmatively establishes standing because it confirms the arbitration award which states that Nazem was not a member and Akeed and ANT's standing objection was denied. Thus, no extrinsic evidence should have ever been considered in determining Nazem's membership status and whether his consent was required for Jamal to file the Underlying

unclear what trial court action or evidence Eco Planet and Mezanazi are challenging and they also fail to identify the applicable standard of review. *See* TEX. R. APP. P. 38.1(f), (i). With respect to the applicable standard of review, the majority states:

> [Eco Planet and Mezanazi] do not challenge the sufficiency of the evidence supporting the trial court's factual findings. Appellants contest only the trial court's legal conclusions that (1) [ANT Trading and Akeed's] declaratory judgment action did not constitute an impermissible collateral attack on the arbitration award and (2) collateral estoppel did not bar appellees' legal action.

> Lawsuit. Accordingly, the trial court did not have the authority to adjudicate the merits of the Instant Lawsuit and should have dismissed it.

(Footnotes containing citations to Eco Planet and Mezanazi's appendix omitted.)

With respect to Eco Planet and Mezanazi's second issue on appeal, the entirety of their argument is as follows:

> To prevail on a collateral estoppel defense, a defendant must establish three elements: (1) the facts sought to be litigated in the second action were fully and fairly litigated; (2) those facts were essential to the judgment in the prior action; and (3) the parties were cast as adversaries in the first action. *John G. & Marie Stella Kenedy Mem'l Found. v. Dewhurst*, 90 S.W.3d 268, 288 (Tex. 2002).
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> ECO and Jamal established all these conditions. The issue of membership in or ownership of ECO was critical to Akeed's claims in the Underlying Lawsuit. In fact, the Arbitrator identified one of Akeed's claim as follows:
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> > Respondent/Counterclaimant Akeed contends that he is the owner of 2/3rds of the LLC as he allegedly purchased [Nazem's] 1/3rd interest in [ECO] from the trustee in [Nazem's] bankruptcy. [ANT and Akeed] claim that this litigation was not approved and was not sanctioned by [ECO] and therefore Claimants lack standing to bring suit against [ANT and Akeed].
>
> Clearly, the questions of ownership and membership were issues in the Underlying Lawsuit and were essential to Akeed's breach of contract cause of action and standing arguments and were addressed by the Arbitrator, who found that neither Nazem nor Akeed was a member or owner of ECO. A reading of the arbitration award establishes that these issues were fully and fairly litigated in the Arbitration, to which Akeed, Jamal, and Nazem were parties. As such, ECO and Jamal conclusively established collateral estoppel, and thus trial court erred by not finding that such claims were barred.

[Footnotes containing citations to Eco Planet and Mezanazi's appendix omitted.]

However, I disagree with the certainty of that statement because Eco Planet and Mezanazi's brief does not set out any standard of review nor does it expressly discuss or cite the trial court's findings of fact and conclusions of law.[4]

Second, Eco Planet and Mezanazi cite only four cases, and these cases merely provide a skeletal framework for the issues by defining collateral attack and stating that judgments are presumed valid; appellants make no effort to apply the law to the facts of this case.[5] *See id.* 38.1(i). Nor do Eco Planet and Mezanazi provide citations or references to the reporter's record of the bench trial. The majority acknowledges Eco Planet and Mezanazi's failure to provide a clear and concise argument for their contentions with appropriate citations to authorities when they state with respect to the collateral attack issue that "[e]ven assuming that this statement constitutes a finding of fact, . . . **appellants do not explain** how the trial court's judgment on Miznazi's managing-member status here affects the arbitration award or judgment in the Underlying Lawsuit" and with respect to the collateral estoppel issue that "**[a]ppellants do not identify any evidence in the record** reflecting that membership in Eco Planet required an ownership interest." (Emphases added.)

[4] Eco Planet and Mezanazi include the trial court's findings of fact and conclusions of law in the appendix to their brief. However, in the body of their brief they do not reference those findings with citations to the record or to their appendix.

[5] I also note that a significant portion of their argument focuses on what "[ANT Trading and Akeed] *may* argue." (Emphasis added.)

Third, in their reply brief, Eco Planet and Mezanazi argue, for the first time, that they introduced sufficient evidence to support their plea in avoidance based on collateral estoppel among other arguments, and they finally supply some argument and authority, including citations to the reporter's record. Nevertheless, the arguments in their reply brief remain unclear as to their complaint on appeal, and they still fail to identify the applicable standard of review. Further, their reply brief is too late to cure the problem with their initial brief. *See, e.g.*, *Duncan v. Acius Grp., L.P.*, No. 05-18-01432-CV, 2019 WL 4392507, at *6 (Tex. App.—Dallas Sept. 13, 2019, no pet.) (mem. op.). To allow an appellant to raise or argue an issue for the first time in its reply brief is unfair to the appellee, who has no opportunity to file a written response and opens the door for appeals by ambush.

Fourth, although the Court did not send a letter informing Eco Planet and Mezanazi that their brief was inadequate, they were placed on notice as to the deficiency of their brief on more than one occasion. In their response, ANT Trading and Akeed stated that Eco Planet and Mezanazi failed to brief the standard of review for their issues. And, with respect to the collateral estoppel issue, ANT Trading and Akeed pointed out that they "do not cite to any evidence in their brief for these elements" and that "[f]rom a reading of [Eco Planet and Mezanazi's] brief[,] they do not cite to any evidence for any specific element they are required to prove. They have not cited the reporter's record showing what if any evidence they presented at trial to prove any element of their defense." Later, during oral argument, the panel

directly asked Eco Planet and Mezanazi what trial court action was being appealed and what standards of review applied to their issues because it was not included in the briefing. In response, counsel for Eco Planet and Mezanazi stated:

> You're correct and I apologize for that. I think there are two standards of review. With respect, what's being appealed is the final judgment. And, we're asking this Court to reverse that final judgment and dismiss these claims with prejudice based on the Court's lack of jurisdiction. . . . [With respect to their claim that the trial court lacked jurisdiction,] I believe it is de novo. There are no disputed facts. It is purely a question of how the law applies to the facts that are before us and on paper. . . . I think the standard of review for collateral estoppel would be abuse of discretion.

Also, during oral argument, counsel for ANT Trading and Akeed pointed out that in Eco Planet and Mezanazi's appellate brief they failed to specify what portion of the judgment they were appealing, they did not identify which of the many findings of fact and conclusions of law they were challenging, and they did not set forth an argument with any specificity to show what trial court action they were attacking.[6]

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[6] Specifically, counsel for ANT Trading and Akeed stated:

> In reading the appellants' brief, I likewise did not see any notion of what the standard of review would be. Likewise, I did not see specifically what portion of the judgment they were appealing. And, I bring that out for the very fact that when you look at the findings of fact and conclusions of law, which were adopted by the judgment, there were numerous rulings that are made within there that particular findings of fact and conclusions of law and judgment. And, the appellants' brief does not with any degree of specificity set forth what if any of the those particular points they are attacking. That's number one, and again, number two was the standard of review here—abuse of discretion or de novo. Having said that, I have responded to appellants' brief. . .
>
> . . . .
>
> Under collateral estoppel, and this is something I brought out in my brief, there is no evidence. They have cited to no portion of the reporter's record and there is no evidence. It's their burden of proof to prove collateral estoppel. Their brief specifically articulated the elements which they must prove and there was no evidence cited in their brief to any of those elements. Now, after I brought that out to the Court's attention, in their reply brief,

Despite all of these comments relating to the deficiency of their brief, at no time, prior to or after the submission of this appeal, did Eco Planet and Mezanazi seek to amend their brief to correct them. *Cf. Horton*, 591 S.W.3d at 569 (concluding appellant was entitled to reasonable opportunity to correct defective record citations and noting that when opinion issued and appellant was alerted to citations errors, she filed motion for rehearing with corrected citations that appellate court denied). Even though we reasonably construe the rules, Eco Planet and Mezanazi must follow them—they may not simply disregard them. *See Reule*, 483 S.W.3d at 620.

Finally, this case is distinguishable from the Texas Supreme Court's opinions in *Horton* and *St. John*. *See Horton*, 591 S.W.3d 567; *St. John*, 595 S.W.3d 211. Both of those opinions reversed this Court's conclusions that the appellants had waived issues because they failed to comply with the briefing rules. *See Horton*, 591 S.W.3d 567; *St. John*, 595 S.W.3d 211.

In *Horton*, this Court held that the appellant did not demonstrate summary judgment was improper and, in fact, had "'not presented anything for [the court] to review' because the documents she cited as raising a fact issue were not part of the summary-judgment record." *Horton*, 591 S.W.3d at 568. This Court "primarily faulted [the appellant] for citing [] documents in the appendix of her appellate brief

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> they then cite particular cases which stand for the proposition that if the pleadings in the record substantially show a possibility of collateral estoppel that is sufficient evidence. But that's not the case here. . .

instead of providing citations to the clerk's record." *Id.* "But rather than allowing [the appellant] an opportunity to rectify that briefing defect, [this Court] treated [the appellant's] citations to her appendix as citations to the portion of the appellate record indicated on each appendix document." *Id.* This proved to be a problem for the appellant because, although the appellant "correctly identified the documents she was relying on to support her appellate issues and those documents were actually offered in opposition to [the appellee's] summary-judgment motions, [] the appendix [] cited [] those same documents where they were attached to [the appellant's] motion for continuance and motion for new trial." *Id.* The Texas Supreme Court noted the appellant cited the right documents, but she had the wrong record citations and concluded that this briefing inadequacy was easily correctable. *Id.*

In *St. John*, the Texas Supreme Court considered whether the courts of appeals have the authority to order supplemental briefing. *St. John*, 595 S.W.3d at 212. In the underlying opinion, this Court concluded that it did not have the authority to order supplemental briefing because the Texas Rules of Appellate Procedure did not allow the court to "sua sponte identify an issue not raised by a party and request additional briefing or reformulate an appellant's argument into one not originally asserted." *Id.* at 213. The Texas Supreme Court disagreed with our premise that the appellants had not raised the ecclesiastical-abstention doctrine in their brief and reversed this Court's judgment. *Id.* at 214.

Neither *Horton* nor *St. John* held that appellate courts cannot conclude that a brief is inadequate and waive any inadequately briefed issues. In fact, in *Horton*, the Texas Supreme Court stated "[I]t is 'settled' that 'an appellate court has some discretion to choose between deeming a point waived and allowing amendment or rebriefing' and 'whether that discretion has been properly exercised depends on the facts of the case.'" *Horton*, 591 S.W.3d at 569–70 (quoting *Fredonia*, 881 S.W.2d at 284). And, in *St. John*, the Texas Supreme Court explicitly stated "[C]ourts of appeals retain their authority to deem an unbriefed point waived in lieu of requesting additional briefing." *St. John*, 595 S.W.3d at 215.

Eco Planet and Mezanazi have failed to provide us with argument, analysis, or authorities that might make their complaints viable. *See RSL Funding*, 569 S.W.3d at 126 (concluding appellant failed to present any theory, analysis, or authority without affording appellant opportunity to rebrief). Accordingly, I would conclude that Eco Planet and Mezanazi have failed to comply with the briefing rules and by failing to adequately brief their complaints, they have waived their issues.[7]

[7] Even if I were to agree that Eco Planet and Mezanazi's brief was adequate, the majority fails to address two important preliminary issues: (1) the jurisdiction of the judge sitting by assignment to sign the written findings of fact and conclusions of law in the absence of an order of appointment in the record on appeal and the effect, if any, that this absence has on those findings of fact and conclusions of law; and (2) Eco Planet and Mezanazi's contention that "the trial court erred by failing to dismiss the Instant Lawsuit for lack of subject[-]matter jurisdiction."

II. CONCLUSION

For the reasons stated in this concurring opinion, Eco Planet and Mezanazi have failed to adequately brief their arguments on appeal.

/Leslie Osborne/
LESLIE OSBORNE
JUSTICE

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