

Opinion issued May 26, 2016



In The
Court of Appeals
For The
First District of Texas

NO. 01-15-00522-CV

ALEKSANDER BORISOV, Appellant

V.

**KERRY LEA KEELS, CHIEF CLERK, HARRIS COUNTY JUSTICE
COURT PRECINCT 5, PLACE 1, Appellee**

**On Appeal from the County Civil Court at Law No. 4
Harris County, Texas
Trial Court Case No. 1041858**

MEMORANDUM OPINION

Appellant, Aleksander Borisov, appeals the trial court’s dismissal of his suit against Kerry Lea Keels, the Chief Clerk of the Harris County Justice Court Precinct 5, Place 1, pursuant to Texas Rule of Civil Procedure 91a.¹ We affirm.

BACKGROUND

A detailed recitation of the facts is unnecessary to our disposition of this appeal. Thus, for the purpose of context only, we provide the following brief summary of the facts as taken from Borisov’s pleadings.

Borisov filed two lawsuits against Autozone, Inc. in Harris County Justice Court Precinct 5, Place 1, alleging Autozone sold him a defective car battery. After both suits and attempted appeals therefrom were resolved against him, Borisov filed the present suit against Kerry Lea Keels, the Chief Clerk of the Justice Court in which the Autozone cases were filed. The gist of Borisov’s claims against Keel seems to be an allegation that she failed to include in the record of the Autozone cases certain documents that he had filed, thereby causing him to lose those cases and causing the justice court to “publicly disgrace” him in front of more than 50 people.

Keels filed a motion to dismiss Borisov’s suit pursuant to Texas Rule of Civil Procedure 91a, alleging that none of the claims asserted against her “have any basis

¹ “[A] party may move to dismiss a cause of action on the grounds that it has no basis in law or fact.” TEX. R. CIV. P. 91a.1.

in fact or law.” Borisov did not respond to the motion to dismiss, and, after a hearing thereon, the trial court dismissed his case.

Borisov appealed to this Court and filed an appellate brief on October 16, 2015. Keels filed a Motion to Require Appellant to Rebrief. This Court found that his brief “violat[ed] the formal requirements set forth in TEX. R. APP. P. 38.1(f),” and ordered Borisov to redraw his brief within 30 days or face dismissal of his appeal. Nevertheless, while the motion was pending, Keels filed her appellee’s brief. Borisov, at no time pending submission of this appeal, complied with this Court’s order to file a brief complying with Texas Rule of Appellate Procedure 38.1(f).

ANALYSIS

Borisov contends that the trial court erred in dismissing his appeal. Keels responds that Borisov’s inadequate briefing waives this alleged error on appeal. We agree. Borisov has not provided a single citation to the record or legal authorities in his brief. Rule 38.1(i) of the Texas Rules of Appellate Procedure requires a brief to contain “clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.” TEX. R. APP. P. 38.1(i). We are to construe the appellate rules liberally, but neither this court nor any other is under a duty to make an independent search of the record to determine whether an assertion of error is valid. *See Ashley Furniture Indus. Inc. ex rel. RBLIS Inc. v. Law Office of David Pierce*, 311 S.W.3d 595, 597 (Tex. App.—El Paso 2010, no pet.); *Dallas Indep. Sch.*

Dist. v. Finlan, 27 S.W.3d 220, 237 (Tex. App.—Dallas 2000, pet. denied); *Wade v. Comm’n for Lawyer Discipline*, 961 S.W.2d 366, 373 (Tex. App.—Houston [1st Dist.] 1997, no writ). This court has discretion to find that error is waived based on inadequate briefing, and it is not necessary to afford an appellant an opportunity to rebrief. *Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284 (Tex. 1994); *King v. Graham Holding Co., Inc.*, 762 S.W.2d 296, 298–99 (Tex. App.—Houston [14th Dist.] 1988, no writ). Adequate briefing includes proper citation to the record, and courts have found error waived based on a failure to provide citations to the record. *See, e.g., Niera v. Frost Nat’l Bank*, No. 04-09-00224-CV, 2010 WL 816191, at *3 (Tex. App.—San Antonio Mar. 10, 2010, pet. denied) (mem. op.); *Ashley Furniture Indus.*, 311 S.W.3d at 597; *In re M.J.G.*, 248 S.W.3d 753, 760 (Tex. App.—Fort Worth 2008, no pet.); *Curtis v. Comm’n for Lawyer Discipline*, 20 S.W.3d 227, 236 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

Borisov’s brief does not include citations to either the clerk’s record or any legal authorities. And, although this Court was not required to afford Borisov an opportunity to rebrief, *see Fredonia State Bank*, 881 S.W.2d at 284, we did so. Nevertheless, Borisov did not avail himself of this privilege and did not attempt to file a brief in compliance with Texas Rule of Appellate Procedure 38.1(i). Accordingly, he has waived his appellate issues by his failure to brief them adequately.

We overrule Borisov's issues on appeal.

CONCLUSION

We affirm the trial court's judgment.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Jennings and Lloyd.