

Opinion issued October 19, 2017



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00014-CV

DR. MICHAEL (MIKHAIL) TYURIN, Appellant

V.

**HIRSCH & WESTHEIMER, P.C., MICHAEL D. CONNER, AND JESSICA
LEVY, Appellees**

**On Appeal from the 234th District Court
Harris County, Texas
Trial Court Case No. 2016-45823A**

MEMORANDUM OPINION

Appellant, Dr. Michael (Mikhail) Tyurin, proceeding pro se, has filed a notice of appeal of the trial court's orders, dismissing his claims against appellees, Hirsch

& Westheimer, P.C., Michael D. Conner, and Jessica Levy (collectively, “appellees”),¹ and severing those claims into a separate trial-court cause number.

We dismiss the appeal.

Tyurin submitted a brief to this Court before the appellate record was complete. *See* TEX. R. APP. P. 34.1 (appellate record consists of clerk’s record and, if necessary to appeal, reporter’s record), 38.6(a) (appellant must file brief within thirty days after later of date clerk’s record or reporter’s record filed). On January 24, 2017, we notified him that his brief did not comply with the requirements of Texas Rule of Appellate Procedure 38.1, struck the brief, and directed him to file a compliant brief. *See* TEX. R. APP. P. 38.1 (governing contents and organization of appellant’s brief).

On March 22, 2017, Tyurin filed a second appellant’s brief. On May 18, 2017, we notified him that his second appellant’s brief did not comply with the requirements of rule 38.1. *See id.* We directed Tyurin to file a compliant amended brief within twenty-one days of our notice and informed him that, if failed to do so, we would dismiss his appeal for want of prosecution. *See* TEX. R. APP. P. 38.8(a)(1). On June 8, 2017, appellant filed an amended appellant’s brief.

¹ *See* TEX. R. CIV. P. 91a (providing trial court may dismiss claim on ground claim has no basis in law or fact, or both).

“An appellate brief is ‘meant to acquaint the court with the issues in a case and to present argument that will enable the court to decide the case.’” *Schied v. Merritt*, No. 01-15-00466-CV, 2016 WL 3751619, at *2 (Tex. App.—Houston [1st Dist.] July 12, 2016, no pet.) (mem. op.) (quoting TEX. R. APP. P. 38.9). The Texas Rules of Appellate Procedure, therefore, “have specific requirements for briefing that require, among other things, that an appellant provide a statement of facts, which includes references to the record, and an argument that is clear and concise with appropriate citations to authorities and the record.” *Lemons v. Garmond*, No. 01-15-00570-CV, 2016 WL 4701443, at *1 (Tex. App.—Houston [1st Dist.] Sept. 8, 2016, pet. denied) (mem. op.) (quoting *Holz v. U.S. Corp.*, No. 05-13-01241-CV, 2014 WL 6555024, at *1 (Tex. App.—Dallas Oct. 23, 2014, no pet.) (mem. op.)). And, a brief must state concisely the issues presented for review. TEX. R. APP. P. 38.1(f). “An issue presented for appellate review is sufficient if it directs the reviewing court’s attention to the error about which the complaint is made.” *Canton–Carter v. Baylor Coll. of Med.*, 271 S.W.3d 928, 931 (Tex. App.—Houston [14th Dist.] 2008, no pet.). An appellant should also explain how the law in the cited authorities applies to the facts of the case and supports his arguments on appeal. *Hernandez v. Hernandez*, 318 S.W.3d 464, 466 (Tex. App.—El Paso 2010, no pet.); *San Saba Energy, L.P. v. Crawford*, 171 S.W.3d 323, 338 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

When an appellant’s brief fails to contain a clear and concise argument for the contentions made with appropriate citations to legal authorities, it is not this Court’s duty to research the law that may support his contentions or review the appellate record for facts to support those contentions. *See Canton–Carter*, 271 S.W.3d at 931–32; *see also Harkins v. Dever Nursing Home*, 999 S.W.2d 571, 573 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (“It is not the duty of an appellate court to seine the record in order to discover, if possible, error by the trial court . . .”). Although we construe an appellate brief liberally, a party proceeding pro se must comply with all applicable procedural rules. *Green v. Midland Mortg. Co.*, 342 S.W.3d 686, 692 n.7 (Tex. App.—Houston [14th Dist.] 2011, no pet.); *see also Lemons*, 2016 WL 4701443, at *1. A pro se litigant is “not exempt from the rules of procedure.” *Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005); *see also Sedillo v. Campbell*, 5 S.W.3d 824, 829 (Tex. App.—Houston [14th Dist.] 1999, no pet.); *Kanow v. Brownshadel*, 691 S.W.2d 804, 806 (Tex. App.—Houston [1st Dist.] 1985, no writ) (“[A] pro se litigant is held to the same standard as a licensed attorney.”).

Tyurin’s amended brief does not provide a concise statement of the issues presented for review; a concise statement, without argument, of the facts pertinent to the issues presented; a succinct and clear summary of his arguments on appeal; or “a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.” *See* TEX. R. APP. P. 38.1(d), (f), (g), (h), (i); *see*

also Tyurin v. Selinidis, No. 01-17-00013-CV, 2017 WL 2545123, at *2 (Tex. App.—Houston [1st Dist.] June 13, 2017, no pet. h.) (mem. op.). Although purporting to challenge the trial court’s orders granting appellees’ motion to dismiss and motion for severance, Tyurin does not develop any legal arguments to set aside the trial court’s orders or support his arguments with appropriate citations to the law or to the trial court record. *See, e.g., Jones v. Shipley*, 508 S.W.3d 766, 768 (Tex. App.—Houston [1st Dist.] 2016, pet. denied) (discussing appellate court’s review of dismissal of claims under Texas Rule of Civil Procedure 91a); *Mallory v. Artic Pipe Inspection Co.*, Nos. 01-12-00979-CV, 01-13-00563-CV, 2014 WL 701123, at *6 (Tex. App.—Houston [1st Dist.] Feb. 20, 2014, pet. denied) (mem. op.) (discussing appellate court’s review of order granting motion to sever claims); *see also Tyurin*, 2017 WL 2545123, at *2. In sum, Tyurin has not corrected the deficiencies in his appellant’s brief as directed by this Court and has not provided a brief that complies with rule 38.1. *See Tyurin*, 2017 WL 2545123, at *2.

When as here, an appellant files a brief that does not comply with the rules and then files an amended brief that also does not comply, “the court may strike the brief, prohibit the [appellant] from filing another, and proceed as if the [appellant] had failed to file a brief.”² TEX. R. APP. P. 38.9(a); *see Clemens v. Allen*, 47 S.W.3d

² We note that because appellees filed a brief in this appeal, we could have regarded appellees’ brief as correctly presenting the case and affirmed the trial court’s orders upon that brief without examining the record. *See* TEX. R. APP. P. 38.8(a)(3);

26, 28 (Tex. App.—Amarillo 2000, no pet.) (citing *Inpetco, Inc. v. Tex. Am. Bank/Hous., N.A.*, 729 S.W.2d 300, 300 (Tex. 1987)); *see also* *Tyurin*, 2017 WL 2545123, at *2; *Harkins*, 999 S.W.2d at 573. When an appellant fails to file a brief, we may dismiss his appeal for want of prosecution. TEX. R. APP. P. 38.8(a)(1). Accordingly, we strike Tyurin’s amended appellant’s brief, filed on June 8, 2017, and dismiss the appeal. *See* TEX. R. APP. P. 42.3(b), 43.2(f). We dismiss all other pending motions as moot.

PER CURIAM

Panel consists of Justices Jennings, Bland, and Brown.

Harkins v. Dever Nursing Home, 999 S.W.2d 571, 573 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (when appellant’s brief not compliant with Texas Rule Appellate Procedure 38.8, court may dismiss appeal for want of prosecution or regard appellee’s brief as correctly presenting case and affirm trial court’s judgment upon brief without examining record).