Opinion issued January 25, 2018

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-01077-CV

DON MCCAFFETY, Appellant

V.

ANGELA BLANCHARD AND NEIGHBORHOOD CENTERS INC., Appellees

On Appeal from the 281st District Court
Harris County, Texas
Trial Court Case No. 2014-54153

MEMORANDUM OPINION

This is an appeal from a final summary judgment dismissing all causes of action asserted by appellant Don McCaffety against Neighborhood Centers Inc. and its president, Angela Blanchard.

Representing himself on appeal, McCaffety presents twelve issues. None justify a reversal because they are either inadequately briefed, based on a complaint not preserved for appellate review, or not tied to any purported error on the trial court's part. We therefore affirm.

Background

Don McCaffety sued Neighborhood Centers Inc., a nonprofit corporation, and its president, Angela Blanchard, alleging fraud, negligence, breach of contract, and breach of fiduciary duty. Neighborhood Centers was one of several groups selected to receive funding to provide minor repairs to homes damaged by Hurricane Ike. Because the funding was limited, Neighborhood Centers formed a committee with other relief groups to establish criteria to govern how all committee members would disburse money for home repairs. Those criteria included that the cost of repairs could not exceed a set percentage of the home's overall value and that repairs would not be performed on any home that had black mold.

McCaffety applied to Neighborhood Centers to repair his hurricane-damaged home. Neighborhood Centers sent a contractor to McCaffety's home to inspect the damage, but the extent of the damage, the presence of black mold, or both meant that the home failed the criteria for funding repairs.

McCaffety later read a newspaper article indicating that Neighborhood Centers returned $8 million in unused funding to the Federal Emergency Management Agency. He subsequently filed this lawsuit, complaining that Neighborhood Centers should have paid for repairs to his home. The trial court granted traditional and no-evidence motions for summary judgment, dismissing all of McCaffety's claims.

McCaffety appealed. We originally dismissed the appeal for want of prosecution because he had failed to file his appellant's brief after having been granted two extensions. McCaffety then filed a motion for rehearing, contending that he had requested a pro bono lawyer. We granted rehearing to allow him additional time to seek legal assistance, and we reinstated this appeal.

Analysis

I. Motions to compel

In issues one, two, and six, McCaffety contends that the trial court should not have denied his motions to compel the production of certain documents. Although McCaffety attached to his brief docket sheets indicating the denial of motions to compel on three different dates, the motions themselves are not part of the clerk's record, and the appellant's brief provides no explanation of what he sought to compel.

We hold self-represented litigants to the same procedural rules that we hold litigants with counsel. *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184–85 (Tex. 1978). Appellants must state in their briefs the facts pertinent to the issues presented, supported by record references; a clear argument on each issue presented, beyond merely repeating the issues themselves; and appropriate citations to authority and to the record to support the contentions made. TEX. R. APP. P. 38.1(g)–(i). When an appellant fails to include these required items, the issue is waived. *See, e.g.*, *Crider v. Crider*, No. 01-10-00268-CV, 2011 WL 2651794, at *4 (Tex. App.—Houston [1st Dist.] July 7, 2011, pet. denied) (mem. op.). It is not this court's duty to review the record, research the law, and then fashion a legal argument when the appellant's briefing fails to do so. *Canton-Carter v. Baylor Coll. of Med.*, 271 S.W.3d 928, 931–32 (Tex. App.—Houston [14th Dist.] 2008, no pet.).

McCaffety did not provide any argument to support his assertion that the trial court committed reversible error when it denied the motions. There is no motion to compel in the record and no explanation of why the trial court should have granted the motions. McCaffety waived issues one, two, and six by inadequately briefing them.

II. Time limitation on examination of witness

McCaffety's issues three and four concern his examination of a witness at a motions hearing. Nothing in his brief explains the purpose of the hearing or the relevance of the testimony, but the hearing transcript suggests that the witness was called to present evidence in response to a motion to declare McCaffety a vexatious litigant.

In issue three, McCaffety contends that the trial court should have permitted him more than five minutes to question the witness. To preserve for appeal a complaint about a time limit for examining a witness, a litigant must object in the trial court and obtain a ruling or a refusal to rule, or he must file a formal bill of exception. *See* TEX. R. APP. P. 33.1, 33.2; *Jackson v. Jackson*, No. 14-07-00917-CV, 2009 WL 1124354, at *2–3 (Tex. App.—Houston [14th Dist.] Apr. 28, 2009, no pet.) (mem. op.). McCaffety not only failed to object to the time limit, he agreed to it. He has not preserved this issue.

In issue four, McCaffety contends that the witness did not answer certain questions about the damage to his home and materials and costs for repairs, and that the trial court "refused to allow" him "the right to know these answers." He contends that this violated his Fourteenth Amendment right to due process. McCaffety failed to object to the witness's responses, or to present this complaint to the trial court in any other way. Our review of the record does not show any

instance of the witness refusing to answer a question. Although the witness did not remember the answers to certain questions, that is not the same as a refusal to answer. McCaffety did not object to the time limit, and he was permitted to ask additional questions on re-direct. He never asked the court to direct the witness to respond to any unanswered question.

We conclude that McCaffety has not preserved or otherwise sufficiently presented any argument that his due-process rights were violated. *See O.C.T.G., L.L.P. v. Laguna Tubular Prods. Corp.*, No. 14-13-00981-CV, 2014 WL 3512863, at *4–5 (Tex. App.—Houston [14th Dist.] July 15, 2014, no pet.) (mem. op.). We overrule issues three and four.

III. Denial of continuance

In issues five and eight, McCaffety contends that the trial court erred by failing to rule on a motion to continue a hearing on Blanchard's motion for summary judgment. "A party moving for continuance of a summary-judgment hearing must obtain a written ruling on its motion in order to preserve a complaint for appellate review." *Kadhum v. Homecomings Fin. Network, Inc.*, No. 01-05-00705-CV, 2006 WL 1125240, at *2 (Tex. App.—Houston [1st Dist.] Apr. 27, 2006, pet. denied) (mem. op.) (citing TEX. R. APP. P. 33.1). To preserve error in a trial court's refusal to rule on a motion, there must be an objection to the refusal. TEX. R. APP. P. 33.1(a)(2)(B). Because McCaffety did not obtain a written ruling

on his motion for a continuance, and he did not object to the court's failure to rule, he failed to preserve these two issues.

IV. Allegation of bias and prejudice

In issue seven, McCaffety contends that the trial court "showed bias and prejudice" against him when it purportedly suggested that defense counsel should object to an amended petition that added an additional cause of action. McCaffety has preserved no error, and he waived this issue by insufficiently briefing it. He has not presented any argument to suggest that the trial judge did anything improper, that he objected in the trial court, that he was harmed, or that he is entitled to any particular appellate relief. *See* TEX. R. APP. P. 33.1(a), 38.1(i), 44.1(a). Indeed, the trial court actually granted the motion for leave to amend the petition to add a new cause of action for breach of fiduciary duty. We overrule issue seven.

Relatedly, in issue eleven McCaffety complains that the trial judge "screamed at" him and "stormed out of the court" after he handed her a document. The record of the hearing does not support McCaffety's characterization of events. Even if true, McCaffety does not identify any harmful error in any action taken by the trial court. *See* TEX. R. APP. P. 44.1(a). We overrule issue eleven.

V. Summary-judgment evidence

In issue nine, McCaffety contends that the trial court improperly excluded his summary-judgment evidence. But the transcript from the summary-judgment hearing relied upon by McCaffety in support of this contention shows no adverse ruling. During the summary-judgment hearing, McCaffety contended that the no-evidence motions for summary judgment should instead be construed as traditional motions for summary judgment because the motions "mentioned" evidence. After reviewing the motions, the trial court confirmed that the only mentions of evidence were in the movants' reply in support of their motions, in which they objected to McCaffety's summary-judgment evidence. The record does not support McCaffety's suggestion that the trial court excluded his evidence, however. We overrule issue nine, which does not identify any error.

In issue ten, McCaffety contends that the trial court erred by admitting summary-judgment evidence. In his brief, he contends that the evidence was not produced during discovery, and he complains that there was no "letter of intent filed and noticed to the court and the plaintiffs/appellant" before the summary-judgment hearing. While the brief attaches the document about which McCaffety complains, he has not shown, and our review of the record has not revealed, any objection that was made to the trial court. He also has not identified any discovery request to which this document was responsive, nor has he presented any other

argument to explain why it should not have been taken into consideration. We overrule issue ten because it was not preserved and it has been inadequately briefed. *See* TEX. R. APP. P. 33.1(a), 38.1(i).

VI. Summary-judgment ruling

In issue twelve, McCaffety reiterates aspects of his complaint against Neighborhood Centers and Blanchard, alleging that $8 million of relief funds were returned to FEMA without his home being repaired. He further notes that he received a letter from Neighborhood Centers, which stated that it used all allocated FEMA funds and suggested that some other agency might be able to help him. This final issue does not identify any error committed by the trial court for which he seeks reversal. Because McCaffety does not identify any error or attack the merits of the trial court's rulings, "[i]t would be inappropriate for this court to speculate as to what [he] may have intended to raise as an error by the trial court on appeal." *Canton-Carter*, 271 S.W.3d at 931. Issue twelve does not present any purported error for us to address, and we overrule it.

Conclusion

With respect to each issue, McCaffety has failed either to present an argument, preserve error, demonstrate harm, or otherwise identify any reversible error. We therefore affirm the trial court's judgment.

Michael Massengale
Justice

Panel consists of Justices Higley, Massengale, and Lloyd.