

Opinion issued August 11, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00375-CV

MICHAEL MCCANN, DDS, Appellant
V.
BLUEWATER INVESTMENTS INC., Appellee

On Appeal from the County Court at Law No. 4
Brazoria County, Texas
Trial Court Case No. CI58875

MEMORANDUM OPINION

Appellant, Michael McCann, DDS, appearing pro se, challenges the county court's judgment in favor of appellee, Bluewater Investments Inc. ("Bluewater"), in its forcible-detainer action against him.¹ In three issues, McCann contends that the

¹ See TEX. PROP. CODE ANN. § 24.002 ("Forcible Detainer").

trial court judge signed the judgment without having “met the qualifications of office” and without having to “complet[e] and fil[e] the required oaths and statement of office” and the trial court judge, “who [is] not qualif[ied] for office,” is not “entitled to compensation or retirement benefits.”²

We affirm.

Background

Bluewater filed, in a Brazoria County justice court,³ its petition for forcible detainer, seeking to evict McCann from the property located at 112 Red Oak Street, Brazoria County, Texas 77422 (the “property”). In its petition, Bluewater, who identified itself as the owner of the property, alleged that on November 1, 2015, it leased the property to McCann. The “initial lease term ended on October 31, 2016, but the lease continued on a month-to-month basis until written notice was sent to [McCann] on March 29, 2018.” The notice told McCann that “the lease was terminated effective April 30, 2018.” Because McCann informed Bluewater that “he did not receive the notice until mid-April 2018, the lease term was extended”

² McCann phrases his “issues” in the form of questions, asking: (1) “Is the [o]rder lawful if the judge signing the [o]rder has not met the qualifications of office?”; (2) “Can a judge lawfully preside in a court of law without completing and filing the required oaths and statement of office?”; and (3) “Is the judge who does not qualify for office entitled to compensation or retirement benefits?”

³ *See id.* § 24.004(a) (“[A] justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits.”).

until May 31, 2018. But McCann did not vacate the property on or before May 31, 2018, even after Bluewater made a “written demand” to vacate the property. Thus, in its petition, Bluewater sought possession of the property and court costs.

McCann did not file an answer in justice court or appear. The justice court entered a default judgment of possession in favor of Bluewater and ordered McCann to pay \$121 in court costs. McCann then appealed the judgment of the justice court to the county court for a trial de novo.⁴

At trial, the county court admitted into evidence Plaintiff’s Exhibits 1–3.⁵ Plaintiff’s Exhibit 1 is a copy of a letter from Bluewater to McCann, dated March 29, 2018. The letter states that Bluewater owns the property and is the landlord under a written lease dated November 1, 2015. It also informs McCann:

The current lease expired on October 31, 2016, and has been continuing on a month-to-month basis.

Bluewater . . . will not be renewing the lease with you after April 30, 2019. Notice is hereby given that your right to occupy the [p]roperty is terminated at 11:59 p.m. on Monday, April 30, 2018. You should vacate the property on or before 11:59 p.m. on April 30, 2018.

Termination of the lease does not eliminate your obligation to timely pay rent of \$1,200.00 for April 2018. Monthly rent of \$1,200.00 will be due on April 1, 2018, and if not timely paid, [Bluewater] is prepared to declare default and immediately file an eviction suit for non-payment of rent. If you . . . timely pa[y] rent for April 2018, but

⁴ See TEX. R. CIV. P. 510.10.

⁵ Plaintiff’s exhibits were admitted into evidence without objection.

do not vacate the [p]roperty on or before April 30, 2018, [Bluewater] will also file an eviction suit against you as a holdover occupant.

(Emphasis omitted.) “USPS Tracking” information, admitted into evidence along with the letter, states that the letter was delivered to McCann on April 9, 2018.

Plaintiff’s Exhibit 2 is a copy of a letter from Bluewater to McCann dated June 8, 2018. It again states that Bluewater is the owner of the property and is the landlord under a written lease dated November 1, 2015. Additionally, it informs McCann:

[Bluewater] received a payment from you in the form of a check . . . drawn on the account of BPM Associates, dated May 31, 2018, in the amount of \$1,200.00. [Bluewater is] enclosing that check back to you because [it] terminated the lease effective April 30, 2018. Because one of your assistants contacted the landlord stating that you did not receive the termination notice until April 9, 2018, your rent payment for May 2018 was accepted, although the lease was terminated effective April 30, 2018, as [previously] indicated in [a] letter to you dated April 11, 2018. Accordingly, your payment for June 2018 (as referenced on the enclosed check) is returned.

Please vacate the property immediately, but no later than three (3) days from the date of this letter.

“USPS Tracking” information, admitted into evidence along with the letter, states that the letter was delivered to McCann on June 11, 2018.

Plaintiff’s Exhibit 3 is a copy of a letter from Bluewater to McCann dated June 13, 2018. It reiterates that Bluewater is the owner of the property and is the landlord under a written lease dated November 1, 2015. The letter also provides:

The lease terminated but you have refused to vacate the [p]roperty.

As the owner and landlord of the [p]roperty, [Bluewater] . . . request[s] possession and requests that you vacate the premises within three (3) days from the date of this letter. This is a formal notice and demand for possession and demand that you vacate the [p]roperty.

Formal written demand for possession is hereby made. You are hereby given notice to vacate the premises on or before midnight [on] the 18th day of June, 2018, which is at least three (3) days from the date of this notice to you or the [p]roperty. Your failure to move out by that time will result in appropriate legal action before the [j]justice of the [p]eace in the precinct in which the premises are located. Delay or postponement of such action shall not constitute a waiver.

If you do not vacate the premises on or before June 18, 2018, [Bluewater] will institute a forcible detainer action against you. If such action is filed, [Bluewater] will seek recovery of attorney's fees and court costs.

(Emphasis omitted.) "USPS Tracking" information, admitted into evidence along with the letter, states that the letter "[a]rrived" at the property on June 16, 2018, but "[n]o [a]uthorized [r]ecipient [was] [a]vailable," so "[n]otice [was] [l]eft."

At trial, Steve Millican explained that his father previously owned Bluewater before he passed away. His mother now controls it. Bluewater wants possession of the property so that it can sell the property, but McCann refuses to vacate. Millican testified that McCann's lease agreement with Bluewater had expired, and McCann had been "going month to month." Bluewater sent McCann a notice stating that it "wished to not continue the [lease] agreement" as of April 30, 2018. According to

Millican, since June 2018, McCann had not paid any rent related to the property. Rent for the property was \$1,200 per month, and McCann owed Bluewater \$14,400 in unpaid rent. Bluewater requested possession of the property and unpaid rent.

McCann explained at trial that he believed that the justice court's "eviction . . . [was] void" and, thus, the county court did not have jurisdiction. McCann stated that the case "should go back down" to the justice court and "start over" because "[e]viction [was] improper." McCann requested that the county court "refund the \$242 that [he] paid to come up [there] and order [the] return [of] the [\$]10,000 cash that [he] put up." McCann also stated, related to Millican: "I'm sure he wants his money. I have no problem with that."

The county court rendered judgment in favor of Bluewater, ordering that McCann surrender possession of the property and pay Bluewater \$14,400 in damages for unpaid rent and court costs.

Inadequate Briefing

In his first, second, and third issues, McCann raises three questions: (1) "Is the [o]rder lawful if the judge signing the [o]rder has not met the qualifications of office?"; (2) "Can a judge lawfully preside in a court of law without completing and filing the required oaths and statement of office?"; and (3) "Is the judge who does not qualify for office entitled to compensation or retirement benefits?" He also asserts that he "is entitled to a bona fide judge whenever he steps into a [c]ourt";

“[j]udges act without judicial authority, make decisions and issue orders which . . . negatively impact[] [his] life, liberty, and happiness, all of them sitting with no authority”; and “[t]he Declaration of Independence promises him that his rights will be secured by the [g]overnment which has been instituted among men.” And he requests that “this Court . . . summarily remove th[e] justice and judge from their respective positions, order them to pay back the monies they have been paid under false pretenses, and forbid them from holding public office again.”⁶

An appellant’s brief “must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.” TEX. R. APP. P. 38.1(i). “This is not done by merely uttering brief conclusory statements, unsupported by legal citations.” *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied); *see also Yoonessi v. D’Arcy*, No. 05-07-00689-CV, 2008 WL 4981631, at *1 (Tex. App.—Dallas Nov. 25, 2008, pet. denied) (mem. op.) (pro se appellant bears burden of discussing his assertions of error). A failure to provide substantive analysis of an issue or cite appropriate authority waives a complaint on appeal. *Marin Real Estate*

⁶ To the extent McCann directs this Court to documents attached to his appellant’s brief that are not otherwise contained in the appellate record, we note that the attachment of documents as exhibits or appendices to an appellate brief does not constitute a formal inclusion of such documents in the record for appeal and we cannot consider matters outside of the record in our review. *See McCann v. Spencer Plantation Invs., Ltd.*, No. 01-16-00098-CV, 2017 WL 769895, at *4 n.5 (Tex. App.—Houston [1st Dist.] Feb. 28, 2017, pet. denied) (mem. op.).

Partners, L.P. v. Vogt, 373 S.W.3d 57, 75 (Tex. App.—San Antonio 2011, no pet.); *Washington. v. Bank of N.Y.*, 362 S.W.3d 853, 854–55 (Tex. App.—Dallas 2012, no pet.); *Huey v. Huey*, 200 S.W.3d 851, 854 (Tex. App.—Dallas 2006, no pet.). Although we construe pro se pleadings and briefs liberally, we hold pro se litigants to the same standards as licensed attorneys and require them to comply with applicable laws and rules of procedure. *In re N.E.B.*, 251 S.W.3d 211, 211–12 (Tex. App.—Dallas 2008, no pet.).

In his brief, McCann acknowledges that “Bluewater had every right to file a forcible detainer action against [him]” and he is not appealing the county court’s judgment “because of the outcome.” Thus, McCann does not appear to be challenging the county court’s judgment ordering him to surrender possession of the property to Bluewater and to pay Bluewater \$14,400 in damages for unpaid rent and court costs. *See Valadez v. Avitia*, 238 S.W.3d 843, 845 (Tex. App.—El Paso 2007, no pet.) (appellant raises issue when she directs reviewing court to error); *Point of Error*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “point of error” as “[a]n alleged mistake by a lower court asserted as a ground for appeal”).

As to his three purported “[i]ssues” raised on appeal, McCann, in his brief, fails to provide this Court with appropriate argument, analysis, explanation, or support for his “[i]ssues” or the relief that he has requested from this Court. *See* TEX. R. APP. P. 38.1(i); *Richardson v. Marsack*, No. 05-18-00087-CV, 2018 WL

4474762, at *1 (Tex. App.—Dallas Sept. 19, 2018, no pet.) (mem. op.) (“Our appellate rules have specific requirements for briefing,” requiring “appellants to state concisely their complaints, to provide succinct, clear, and accurate arguments for why their complaints have merit in law and fact, to cite legal authority that is applicable to their complaints, and to cite appropriate references in the record.”); *Huey*, 200 S.W.3d at 854 (“We have no duty to brief appellant’s issue for [him]. Failure to cite to applicable authority or provide substantive analysis waives an issue on appeal.”); *see also Hopes-Fontenot v. Farmers New World Life Ins. Co.*, No. 01-12-00286-CV, 2013 WL 4399218, at *1 (Tex. App.—Houston [1st Dist.] Aug. 15, 2013, no pet.) (mem. op.) (pro se litigant must properly present his case on appeal; we “may not make allowances or apply different standards for litigants appearing without . . . counsel”).

Additionally, McCann’s assertions in his “Argument[] and Authorities” and “Summary of . . . Argument” sections of his brief do not entirely correspond to the three questions that he has designated as his purported “[i]ssues” on appeal. *See Wilson v. Empire Towing LLC*, No. 01-18-01145-CV, 2019 WL 3484216, at *2–3, *2 n.3 (Tex. App.—Houston [1st Dist.] Aug. 1, 2019, no pet.) (mem. op.) (holding appellant waived complaints on appeal where assertions in “Argument” section of brief “d[id] not correspond to the three questions that he ha[d] designated as his [i]ssues on appeal” (third alteration in original) (internal quotations omitted)); *Hooks*

v. Brenham Hous. Auth., No. 01-17-00602-CV, 2018 WL 6061307, at *3–4 (Tex. App.—Houston [1st Dist.] Nov. 20, 2018, no pet.) (mem. op.).

Thus, we hold that McCann has waived his first, second, and third issues on appeal.

Conclusion

We affirm the judgment of the trial court.

Julie Countiss
Justice

Panel consists of Justices Landau, Hightower, and Countiss.