



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-20-00493-CV

John E. **LAMBERT** d/b/a Simple Network Solutions,  
Appellant

v.

**SOUTHWEST TEXAS JUNIOR COLLEGE,**  
Appellee

From the 38th Judicial District Court, Uvalde County, Texas  
Trial Court No. 2018-02-31989-CV  
Honorable Camile Glasscock Dubose, Judge Presiding

PER CURIAM

Sitting: Patricia O. Alvarez, Justice  
Luz Elena D. Chapa, Justice  
Irene Rios, Justice

Delivered and Filed: April 21, 2021

DISMISSED FOR WANT OF PROSECUTION

In the underlying suit, John E. Lambert d/b/a Simple Network Solutions argued that Southwest Texas Junior College (STJC) accepted Lambert's proposal to perform computer network upgrade services, a contract was formed, STJC breached the contract, and the district court erred in granting STJC's plea to the jurisdiction.

Because Appellant twice failed to file a brief that complies with the Texas Rules of Appellate Procedure, we dismiss this appeal for want of prosecution.

**APPELLANT’S ORIGINAL BRIEF**

After Lambert filed his original brief, on March 17, 2021, we advised him that his brief did not comply with Rule 38.1 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 38.1.

We advised Lambert that his brief omitted the following:

- Statement of Facts (that complies with the Rules),
- Argument (that complies with the Rules), or
- an Appendix (that complies with the Rules).

*See id.* R. 9.4, 9.5, 38.1. We also advised Lambert that the brief had these additional defects:

- None of the three issues includes citations to the appellate record and each appears to rely on facts that may be outside the appellate record. *Contra id.* R. 38.1(i) (“The brief must contain . . . appropriate citations . . . to the record.”); *Greystar, LLC v. Adams*, 426 S.W.3d 861, 865 (Tex. App.—Dallas 2014, no pet.) (“[A]n appellate court may not consider matters outside the record, which includes documents attached to a brief as an exhibit or an appendix that were not before the trial court.”).
- The brief does not recite the applicable standard of review. *Contra* TEX. R. APP. P. 38.1(i) (requiring “appropriate citations to authorities”).

We advised Lambert that, as filed, his original brief did not properly present anything for appellate review. We ordered Lambert to file an amended brief that corrected all the violations listed above and fully complied with the applicable rules. *See, e.g., id.* R. 9.4, 9.5, 38.1.

We warned Lambert that if the amended brief did not comply with our March 17, 2021 order, we could “strike the brief, prohibit [Appellant] from filing another, and proceed as if [Appellant] had failed to file a brief.” *See id.* R. 38.9(a); *see also id.* R. 38.8(a) (authorizing this court to dismiss an appeal if an appellant fails to timely file a brief).

**APPELLANT’S AMENDED BRIEF**

Lambert timely filed an amended brief, but it does not correct all the deficiencies noted in our March 17, 2021 order or comply with Rule 38.1 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 38.1; *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 896 (Tex. App.—Dallas 2010, no pet.).

In addition to the many formatting and typographical errors throughout the amended brief, *cf.* TEX. R. APP. P. 9.4, the statement of facts contains only two citations that appear to cite to the record (i.e., “R. at Page 14” and “R. at Page 14”); it is unclear whether the references are to the clerk’s record or the reporter’s record, *contra id.* R. 38.1(g) (“The statement must be supported by record references.”); *Bolling*, 315 S.W.3d at 896 (“Importantly, statements of fact must be supported by direct references to the record that are precise in locating the fact asserted. If record references are not made or are inaccurate, misstated, or misleading, the brief fails.”).

In the arguments section, the three issues from the original brief are combined into a single issue, but the entire arguments section contains only a single, unclear citation to the appellate record: “R. at Page 14-15.” *Contra* TEX. R. APP. P. 38.1(i) (“The brief must contain . . . appropriate citations . . . to the record.”); *Bolling*, 315 S.W.3d at 896.

Further, the statement of facts and arguments sections again cite to documents in the appendix, but none of the appendix documents show file stamps or otherwise indicate that they are copies taken from the appellate record. *Contra id.* R. 38.1(i) (“The brief must contain . . . appropriate citations . . . to the record.”); *Greystar, LLC*, 426 S.W.3d at 865 (“[A]n appellate court may not consider matters outside the record, which includes documents attached to a brief as an exhibit or an appendix that were not before the trial court.”).

Because of the lack of record citations, it is unclear which, if any, of the factual assertions Lambert makes were presented to the trial court. *Contra Greystar, LLC*, 426 S.W.3d at 865 (refusing to review alleged facts outside the appellate record). And “[this court is] not required to search the appellate record, with no guidance from the briefing party, to determine if the record supports the party’s argument.” *Jones v. Hous. Auth. of City of Dallas, Tex. Park Manor*, No. 05-19-00841-CV, 2020 WL 3118615, at \*1 (Tex. App.—Dallas June 12, 2020, no pet.) (mem. op.) (citing *Pratt v. State*, 907 S.W.2d 38, 47 (Tex. App.—Dallas 1995, writ denied)). To obtain

appellate review, it was Lambert's burden to present legal arguments, supported by appropriate legal authorities, based on facts in the record, as shown by appropriate citations to the record. *See* TEX. R. APP. P. 38.1(i) (requiring "clear and concise argument for the contentions made, with appropriate citations to authorities and to the record"); *Jones*, 2020 WL 3118615, at \*1; *Greystar, LLC*, 426 S.W.3d at 865.

Lambert's amended brief has failed to meet his burden, and we may not create or support Lambert's arguments for him. *Cf. Jones*, 2020 WL 3118615, at \*1 ("We also 'know of no authority obligating us to become advocates for a particular litigant through performing their research and developing their argument for them.'" (quoting *Tello v. Bank One, N.A.*, 218 S.W.3d 109, 116 (Tex. App.—Houston [14th Dist.] 2007, no pet.)); *Meyer v. State*, 310 S.W.3d 24, 26 (Tex. App.—Texarkana 2010, no pet.) ("We do not, and cannot, create arguments for parties—we are neither the appellant's nor the appellee's advocate.").

Lambert's amended brief has failed to properly present anything for appellate review. *See Cf. Jones*, 2020 WL 3118615, at \*1 ("We are not required to search the appellate record, with no guidance from the briefing party, to determine if the record supports the party's argument."); *Greystar, LLC*, 426 S.W.3d at 865 (refusing to review alleged facts outside the appellate record).

#### CONCLUSION

Lambert has twice failed to submit a brief that complies with the Texas Rules of Appellate Procedure. We strike Lambert's amended brief, prohibit him from filing another, and dismiss this appeal for want of prosecution. *See* TEX. R. APP. P. 9.4, 38.8(a)(1), 38.9(a), 42.3(b),(c).

PER CURIAM