



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-19-00221-CV

AMY MARIAH TUCKER AND MARLIE ANN TUCKER, Appellants

v.

FORT WORTH AND WESTERN RAILROAD COMPANY, Appellee

On Appeal from the 355th District Court
Hood County, Texas
Trial Court No. C2018043

Before Sudderth, C.J.; Kerr and Wallach, JJ.
Memorandum Opinion by Chief Justice Sudderth

MEMORANDUM OPINION

Newton B. Schwartz Sr., counsel for Appellants Amy Mariah Tucker and Marlie Ann Tucker, attempts to appeal (1) the trial court's summary judgment in favor of Appellee Fort Worth and Western Railroad Company, (2) the trial court's order striking certain medical records from the clerk's record, and (3) its order of contempt against Schwartz.

Schwartz's initial brief failed to comply with the Rules of Appellate Procedure. It was inadequate and incoherent, referred to inapplicable standards of review, and raised complaints that appeared irrelevant to the facts of the case. The "Issues Presented" section did not "state concisely all issues or points presented for review"; the statement of facts provided no record references; and the argument section did not "clear[ly] and concise[ly] present an] argument for the contentions made, with appropriate citations to authorities and to the record." *See* Tex. R. App. P. 38.1 (f), (g), (i); *see* Tex. Standards for App. Conduct 5, *reprinted in* Tex. R. App. P. (West 2020). By written order, we notified Schwartz of our concerns and provided him an opportunity to file an amended brief in compliance with the rules. Our order specifically warned Schwartz that his failure to file an amended brief that complied with the rules might result in our striking Appellant's briefs and dismissing the appeal.

Schwartz filed an amended brief, but his amended brief is no more clear or coherent than his first. We are aware of our duty "to construe the Rules of Appellate Procedure reasonably, yet liberally, so that the right to appeal is not lost by imposing

requirements not absolutely necessary to effect the purpose of a rule.” *Republic Underwriters Ins. Co. v. Mex-Tex, Inc.*, 150 S.W.3d 423, 427 (Tex. 2004) (quoting *Verburgt v. Dorner*, 959 S.W.2d 615, 616–17 (Tex. 1997)). And we agree that a party should not lose its right to appeal based on an unduly technical application of procedural rules. *Willis v. Donnelly*, 199 S.W.3d 262, 270 (Tex. 2006).

Even still, we are not obligated to “become advocates for a particular litigant” by performing research and developing argument for that litigant. *Tello v. Bank One, N.A.*, 218 S.W.3d 109, 116 (Tex. App.—Houston [14th Dist.] 2007, no pet.) (internal quotation omitted). It is the appealing party’s burden to discuss his assertions of error, and “[w]e have no duty—or even right—to perform an independent review of the record and applicable law to determine whether there was error.” *Bullock v. Am. Heart Ass’n*, 360 S.W.3d 661, 665 (Tex. App.—Dallas 2012, pet. denied); *see also Smartt v. City of Laredo*, 239 S.W.3d 869, 872 (Tex. App.—San Antonio 2007, pet. denied) (stating the appellant is obligated to explain his contentions and “cannot leave it up to us to develop it”).

Schwartz’s amended brief fails to comply with the Rules of Appellate Procedure. Because the amended brief fails to clarify Appellant’s argument, it cannot be considered a “clear and concise argument for the contentions made.”¹ We have

¹Moreover, in his amended brief Schwartz has levied additional attacks against opposing counsel. *See* Standards for Appellate Conduct, *Lawyers’ Duties to Lawyers*, Texas Rules of Court (State) 370 (West 2019) (“Counsel will not make personal attacks on opposing counsel or parties”; “Counsel will not attribute bad motives or

determined that any attempt to decipher Schwartz’s argument, as presented, would amount to making his arguments for him. *See Tello*, 218 S.W.3d at 116. Accordingly, we strike his original and amended briefs and dismiss the appeal for want of prosecution. *See* Tex. R. App. P. 38.8(a), 38.9.

/s/ Bonnie Sudderth
Bonnie Sudderth
Chief Justice

Delivered: June 18, 2020

improper conduct to other counsel without good cause, or make unfounded accusations of impropriety.”) (available at <https://www.txcourts.gov/media/1437423/standards-for-appellate-conduct.pdf>).