IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 19, 2023 Session

CLIFFORD LEON HOUSTON v. JAMES F. LOGAN, JR.

Appeal from the Chancery Court for Roane County
No. 16794 Tom McFarland, Chancellor

No. E2022-01696-COA-R3-CV

Clifford Leon Houston ("Appellant") filed a motion to stay foreclosure proceedings in 2010 in the Chancery Court for Roane County (the "trial court"). In September of 2022, Appellant filed a motion to recuse the new Roane County Chancellor. The trial court denied the motion to recuse and dismissed Appellant's action for failure to prosecute. Appellant appealed to this Court. Because his brief fails to comply with Tennessee Rule of Appellate Procedure 27, Appellant's issues are waived, and the trial court's ruling is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and JOHN W. MCCLARTY, J., joined.

Clifford Leon Houston, Ten Mile, Tennessee, Pro Se.

James F. Logan, Jr., Cleveland, Tennessee, Pro Se.

MEMORANDUM OPINION[1]

BACKGROUND

This appeal stems from a long-running dispute between Appellant and attorney James F. Logan, Jr. ("Appellee"). Appellee previously represented Appellant in criminal

[1] Rule 10 of the Tennessee Court of Appeals Rules provides:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

proceedings and, during the course of that representation, Appellant signed a promissory note for $350,000 to cover his legal fees to Appellee. The note was secured by a deed of trust. According to Appellee, the note matured in 2010. A dispute arose regarding the property securing the note after Appellee sent notice to Appellant that foreclosure proceedings would be initiated.

On September 20, 2010, Appellant filed a handwritten motion titled "Motion to Stay Foreclosure Proceedings" in the trial court. While difficult to discern, most of the factual allegations in said motion relate to the 2009 appointment of Retired Judge David Hayes to preside over Appellant's criminal proceedings, which spanned several years. Appellant did not elaborate on the posture of any foreclosure proceedings in his motion. Attached to the motion were several dozen exhibits, most of which dealt with Appellant's criminal trial as opposed to any foreclosure proceedings. Although the procedural posture of the foreclosure sale is not clear from the record, an undated news article in the record provides that "[Appellant] appeared in court . . . to try to halt the sale, but a judge jailed [him] on contempt charges before hearing [his] argument."

On October 22, 2010, Appellee filed a motion to dismiss Appellant's request for a stay, arguing that Appellant stated no claim for which relief could be granted:

> The actions of the trial judge in Criminal Court in granting the wishes of [Appellant] does not form a legal basis for [Appellant] to avoid his responsibilities under the obligation which is the subject of the foreclosure and is secured by the Deed of Trust heretofore executed by [Appellant] and others.

Appellant's motion to stay was not resolved by entry of any order. This came to the trial court's attention in September of 2022, when Appellant filed a motion to recuse the new chancellor, Tom McFarland. Appellant averred that Chancellor McFarland has a "blatantly clear and extremely deadly conflict of interest." Appellant's recusal motion generally provides that, prior to becoming a judge, Chancellor McFarland had relationships with people involved in Appellant's criminal case. Chancellor McFarland entered an order on October 31, 2022, denying the motion to recuse because Appellant failed to comply with Tennessee Supreme Court Rule 10B, which addresses recusal proceedings.

A hearing on Appellee's motion to dismiss was finally held on November 1, 2022, after which the trial court entered an order dismissing Appellant's action for failure to prosecute. This appeal followed.

ISSUES

Appellant raises a single issue for review, which we have slightly restated:

1. Whether a reasonable, objective and well-informed person of the community could reasonably question the court's impartiality on the basis advanced by the Appellant's September 1, 2022 Motion to Recuse.

In his posture as appellee, Mr. Logan raises the issue of whether he should be awarded attorney's fees on appeal.[2]

DISCUSSION

While this appeal arises from a motion to stay foreclosure proceedings and a motion to recuse, a more threshold problem is presented by Appellant's principal brief. Specifically, the brief does not comply with the Tennessee Rules of Appellate Procedure. Consequently, any issues purportedly raised by Appellant are waived.

Appellant proceeds in this Court, as he did in the trial court, pro se. Nonetheless, he "must comply with the same standards to which lawyers must adhere." *Watson v. City of Jackson*, 448 S.W.3d 919, 926 (Tenn. Ct. App. 2014). As we have previously explained,

> [p]arties who decide to represent themselves are entitled to fair and equal treatment by the courts. The courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. However, the courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Thus, the courts must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe.

Id. at 926–27 (quoting *Jackson v. Lanphere*, No. M2010-01401-COA-R3-CV, 2011 WL 3566978, at *3 (Tenn. Ct. App. Aug. 12, 2011)).

Accordingly, notwithstanding his pro se status, Appellant must comply with the procedural rules applicable to this Court. The Tennessee Rules of Appellate Procedure provide that an appellant's brief shall contain, *inter alia*:

> (7) An argument, which may be preceded by a summary of argument, setting forth:
>
> (A) the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require

[2] Although he proceeds pro se, Appellee is a licensed attorney.

> appellate relief, **with citations to the authorities and appropriate references to the record** (which may be quoted verbatim) relied on; and
>
> (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues)[.]

Tenn. R. App. P. 27(a)(7) (emphasis added). Pursuant to Rule 27(a)(7)(A), "[i]t must be clear that a party has constructed an argument regarding his or her position on appeal; if not, the matter is subject to waiver." *Heflin v. Iberiabank Corp.*, 571 S.W.3d 727, 734 (Tenn. Ct. App. 2018) (citing *Newcomb v. Kohler Co.*, 222 S.W.3d 368, 401 (Tenn. Ct. App. 2006)). "[C]ompliance with the Rule has not been achieved" when this Court "cannot ascertain that an issue is supported by adequate argument." *Id*.

In the "argument" portion of his brief, Appellant cites neither to the technical record nor to salient legal authority. Rather, the entirety of Appellant's "argument" section provides:

> The prose plaintiff promptly filed his motion to recuse the criminally corrupt body of Tom McFarland on the 1s[t] day of September 2022 which was his first day of office.
>
> The prose plaintiff September lst, 2022, motion to recuse the criminally corrupt body of Tom McFarland was supported by factual allegations and exhibits, refer to the prose plaintiffs September 1st, 2022, motion to recuse the criminally corrupt body of Tom McFarland case No. 16794.
>
> Chancellor Tom McFarland's October 31st, 2022, order denying the prose plaintiff s motion to recuse does not deny that a blatantly clear and extremely deadly conflict of interest exist between the plaintiff and Tom McFarland but only stated that the prose plaintiff failed to adhere to the procedural requirements of Tenn. Sup. Ct. R. 10B § 1.01.
>
> As of the filing date of the plaintiff's brief defendant attorney James F. Logan Jr. has not filed a motion opposing the plaintiff's motion to recuse, therefore accepting all allegations and exhibits listed in the plaintiff's September 1st, 2022, motion to recuse the criminally corrupt body of Tom McFarland as true and correct.

Respectfully, the foregoing is insufficient. Appellate review generally extends only to those issues presented for review, *see* Tenn. R. App. P. 13, and Appellant's omissions

present a significant violation of Rule 27. Under similar circumstances, we have deemed issues waived. *See, e.g.*, *Masserano v. Masserano*, No. W2018-01592-COA-R3-CV, 2019 WL 2207476, at *4–5 (Tenn. Ct. App. May 22, 2019) (husband waived issues on appeal by failing to cite supporting legal authorities); *Heflin*, 571 S.W.3d at 734 (waiving several arguments on appeal due to "failure to comply with provisions of the rules of appellate practice, namely the Tennessee Rules of Appellate Procedure"); *O'Shields v. City of Memphis*, 545 S.W.3d 436, 443 (Tenn. Ct. App. 2017) (issues waived for, among other things, failure to cite to the technical record). Indeed, we have oft reiterated that "'[i]t is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.'" *Little v. City of Chattanooga*, 650 S.W.3d 326, 353 (Tenn. Ct. App. 2022), *perm. app. denied* (Tenn. June 14, 2022) (quoting *Sneed v. Bd. of Prof'l Resp. of Supreme Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010)).

Because Appellant's argument contains no citations to the record, contains no citations to applicable legal authority explaining the trial court's purported error, and is severely underdeveloped, it can only be characterized as "skeletal." *Little*, 650 S.W.3d at 353; *see also Heflin*, 571 S.W.3d at 734. We are left to speculate as to the precise error Appellant complains of, as well as how any purported error warrants relief in Appellant's favor pursuant to legal authority. Consequently, "compliance with [Rule 27] has not been achieved." *Heflin*, 571 S.W.3d at 734. Appellant's failure is so substantial that it cannot be overlooked; although we are "not unmindful" of his pro se status, we cannot write the brief for him or "create arguments or issues where none otherwise are set forth." *Murray v. Miracle*, 457 S.W.3d 399, 402 (Tenn. Ct. App. 2014). Any issues Appellant has attempted to raise are therefore waived, and we affirm the trial court's dismissal of Appellant's action.

Next, Appellee asserts that he is entitled to attorney's fees on appeal, noting in his brief that "[t]his Court can exercise its discretion and award the party prevailing on appeal the attorney's fee incurred in prosecuting the appeal (See *Archer v. Archer* 907 S.W.2d 412, 419 Tenn. Ct. App. 1995)." However, the case relied on by Appellee, *Archer v. Archer*, addresses attorney's fees awardable under Tennessee Code Annotated section 36-5-103. Section 36-5-103 provides that attorney's fees may be awarded in certain domestic proceedings. As this is not a domestic proceeding, the authority relied on by Appellee is inapplicable, and he does not argue an alternative basis upon which this Court might award him attorney's fees. *See Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 669 (Tenn. Ct. App. 2021) (explaining that Tennessee follows the "American Rule" under which attorney's fees are awardable only in limited circumstances, such as when prescribed by statute).

Moreover, this Court has previously explained, albeit in a different context, that "*pro se* litigants are not entitled to recover attorney fees.... Not even attorneys who proceed *pro se* are entitled to recover fees." *Est. of Brakebill*, No. E2019-00215-COA-R3-CV, 2020 WL 5874874, at *6 (Tenn. Ct. App. Oct. 2, 2020) (quoting *Simpson v. Montague*, 902 F.2d 35 at *4 (6th Cir. May 10, 1990)). Consequently, Appellee is not entitled to recover any fees incurred in this appeal.

CONCLUSION

The ruling of the Chancery Court for Roane County is affirmed. Costs on appeal are assessed to Appellant, Clifford Leon Houston, for which execution may issue if necessary.

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KRISTI M. DAVIS, JUDGE