IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs June 1, 2023

FEDTRUST FEDERAL CREDIT UNION v. LYNNSAY BROOKS

Appeal from the Circuit Court for Shelby County
No. CT-1518-22 Felicia Corbin Johnson, Judge

No. W2022-01119-COA-R3-CV

This appeal concerns a circuit court's dismissal of an appeal by a Defendant from judgments entered by a general sessions court. The circuit court dismissed the Defendant's appeal as untimely. The Defendant appealed that dismissal to this Court. In addition to asserting that the circuit court erred in concluding her appeal was untimely, the Defendant also raises issues related to recusal and notice. We affirm the circuit court's dismissal of the Defendant's appeal.

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

JEFFREY USMAN, J., delivered the opinion of the court, in which JOHN W. MCCLARTY and CARMA DENNIS MCGEE, JJ., joined.

Lynnsay Brooks, pro se.

Brittan Webb Robinson and George F. Higgs, Memphis, Tennessee, for the appellee, FedTrust Federal Credit Union.

OPINION

I.

Lynnsay Brooks[1] borrowed $40,000 from FedTrust Federal Credit Union (FedTrust) to finance a 2016 Jeep Wrangler, pledging the vehicle as security. Ms. Brooks was obligated to pay $584 monthly through September 2025. The security interest was

[1] Joshua Richey signed the loan as a guarantor and was named in the action filed by FedTrust, but he was voluntarily nonsuited for lack of service.

recorded on the vehicle's certificate of title.

FedTrust brought an action in the Shelby County General Sessions Court seeking possession of the Jeep Wrangler as well as monetary damages and attorney's fees. Counsel for Ms. Brooks entered a notice of appearance in July 2021, and Ms. Brooks filed a cross-complaint in the case, asserting violations of the Uniform Commercial Code. Ms. Brooks asserted that she made good-faith efforts to pay but that FedTrust refused her payments. She also alleged various statutory violations related to a purported lack of proper notice of FedTrust's intended disposition of the repossessed vehicle. Counsel for Ms. Brooks withdrew by early December 2021. Ms. Brooks acted pro se for the remainder of the proceedings before the Shelby County General Sessions Court and the Shelby County Circuit Court.

The Shelby County General Sessions Court ultimately entered judgment in favor of FedTrust on its claims on March 3, 2022, in the amount of $22,101.56, and entered a separate judgment the same day, in favor of FedTrust, on Ms. Brooks's cross-complaint. Ms. Brooks filed a notice of appeal to the Shelby County Circuit Court on March 25, 2022, noting that she was appealing the general sessions court's decision entered on March 3, 2022. The record contains a photocopy of a docket entry that reflects that Ms. Brooks was advised that "it was past the 10 days." The record also reflects that the cross-complaint was again dismissed with prejudice in the general sessions court on April 18, 2022. The record does not indicate the reason for this second entry of dismissal or reveal an appeal from this later judgment to the Shelby County Circuit Court.

Following the filing of Ms. Brooks's notice of appeal of the general session court's March 3 rulings, FedTrust promptly filed a motion to dismiss for lack of subject matter jurisdiction based on Ms. Brooks's failure to appeal within the statutory time period of ten days. Ms. Brooks responded by asserting that the general sessions court judge had told her she had 15 days to file an appeal. Nowhere in Ms. Brooks's filings before the circuit court is any reference made to raising an objection related to notice in connection with the general sessions court's April 18, 2022 order, nor does the record include any reference to seeking recusal of either the general sessions court judge or the circuit court judge.

On July 22, 2022, the circuit court conducted a hearing, and on August 12, 2022, it entered an order dismissing Ms. Brooks's appeal from the general session court. The circuit court found that the appeal was not timely filed. Ms. Brooks timely appealed to this court.

II.

Ms. Brooks is representing herself in this appeal as she did for much of the proceedings before the Shelby County General Sessions and Circuit Courts. Pro se litigants "are entitled to fair and equal treatment by the courts." *Vandergriff v. ParkRidge E. Hosp.*,

482 S.W.3d 545, 551 (Tenn. Ct. App. 2015). Courts should be mindful that pro se litigants often lack any legal training and many are unfamiliar with the justice system. *State v. Sprunger*, 458 S.W.3d 482, 491 (Tenn. 2015). Accordingly, courts should afford some degree of leeway in considering the briefing from a pro se litigant, *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003), and should consider the substance of the pro se litigant's filing. *Poursaied v. Tenn. Bd. of Nursing*, 643 S.W.3d 157, 165 (Tenn. Ct. App. 2021). Pro se litigants, however, may not "shift the burden of litigating their case to the courts." *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000). Additionally, "[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." *Sneed v. Bd. of Prof'l Responsibility of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010). In considering appeals from pro se litigants, the court cannot write the litigants' briefs for them, create arguments, or "dig through the record in an attempt to discover arguments or issues that [they] may have made had they been represented by counsel." *Murray v. Miracle*, 457 S.W.3d 399, 402 (Tenn. Ct. App. 2014). It is imperative that courts remain "mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary." *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003).

With this framework in mind, this court discerns three arguments that emerge from Ms. Brooks's appellate brief. One, she asserts the circuit court erred in concluding that her appeal from the general sessions court was untimely because the general sessions court judge told her that she had 15 days rather than 10 days to file. Two, she asserts that "the judge" exhibited bias due to a personal relationship with the parties and should not have presided over her case. Three, she asserts she was not given adequate notice of a hearing regarding her cross-claim in connection with the general sessions court's April 18, 2022 dismissal of her cross-claim, which had been previously dismissed on March 3, 2022. FedTrust responds that these issues are waived under Tennessee Rule of Appellate Procedure 27 and that Ms. Brooks is not entitled to relief on the merits of any of these issues.

FedTrust appropriately and ably demonstrates deficiencies in Ms. Brooks's brief under Tennessee Rule of Appellate Procedure 27, which mandates, among other requirements, a table of contents, a table of authorities, citations to the record for the facts set forth, citations to legal authority for each issue, and a statement regarding the appropriate standard of review. Tenn. R. App. P. 27(a). We agree that Ms. Brooks's brief fails to conform to Tennessee Rule of Appellate Procedure 27, and her pro se status does not excuse her lack of compliance. *Gibson v. Bikas*, 556 S.W.3d 796, 803 (Tenn. Ct. App. 2018). This Court has dismissed appeals for non-compliance with Rule 27. *See*, *e.g.*, *Anderson v. White*, No. M2021-00887-COA-R3-CV, 2022 WL 2444952, at *1 (Tenn. Ct. App. July 5, 2022); *Jefferson v. Williams-Mapp*, No. W2021-01058-COA-R3-CV, 2022 WL 1836926, at *1 (Tenn. Ct. App. June 3, 2022); *Thigpen v. Estate of Smith*, No. M2020-01015-COA-R3-CV, 2022 WL 702144, at *1 (Tenn. Ct. App. Mar. 9, 2022). There is, however, a public policy preference for addressing appeals on the merits. *See*, *e.g.*, *Lacy v.*

Hallmark Volkswagen Inc. of Rivergate, No. M2016-02366-COA-R3-CV, 2017 WL 2929502, at *3 (Tenn. Ct. App. July 10, 2017); *Patterson v. State*, No. M2016-01498-COA-R3-CV, 2017 WL 1103042, at *1 (Tenn. Ct. App. Mar. 24, 2017). This court has the discretion to consider a case that could be subject to dismissal for violation of Rule 27 on the merits. *See*, *e.g.*, *Finley v. Wettermark Keith, LLC*, No. E2020-01081-COA-R3-CV, 2021 WL 3465865, at *3 n.1 (Tenn. Ct. App. Aug. 6, 2021); *Weakley v. Franklin Woods Cmty. Hosp.*, No. E2020-00591-COA-R3-CV, 2020 WL 7861248, at *3 (Tenn. Ct. App. Dec. 22, 2020). In this case, the legal analysis is relatively straightforward, and we perceive no prejudice to FedTrust or the administration of justice from considering Ms. Brooks's arguments despite her Rule 27 violations. *Cannistra v. Brown*, No. M2021-00833-COA-R3-CV, 2022 WL 4461772, at *4 n.3 (Tenn. Ct. App. Sept. 26, 2022). Accordingly, we exercise our discretion to consider the arguments presented on appeal despite the violations of Rule 27. *See id*.

III.

On appeal before this court, Ms. Brooks challenges the circuit court's dismissal of her appeal from the general sessions court. The circuit court's judgment, which is the judgment at issue in this appeal, dismissed Ms. Brooks's appeal for failure to timely file her notice. Tennessee Code Annotated section 27-5-108(a)(1)[2] provides: "Any party may appeal from a decision of the general sessions court to the circuit court of the county within a period of ten (10) days on complying with this chapter." The time given for filing an appeal is "no mere technical formality: it is in fact a mandatory requirement." *Discover Bank v. McCullough*, No. M2006-01272-COA-R3-CV, 2008 WL 245976, at *5 (Tenn. Ct. App. Jan. 29, 2008) (quoting *Love v. Coll. Level Assessment Servs., Inc.*, 928 S.W.2d 36, 38 (Tenn. 1996)). Moreover, this requirement is jurisdictional, and "[t]he failure of an appellant from general sessions court to comply with the statutory security requirement means that the circuit court never acquires subject matter jurisdiction over the appeal." *Sturgis v. Thompson*, 415 S.W.3d 843, 846 (Tenn. Ct. App. 2011); *see US Bank Nat'l Ass'n v. Brooks*, No. M2016-00689-COA-R3-CV, 2016 WL 6581344, at *5 (Tenn. Ct. App. Nov. 4, 2016); *Peterson v. Lepard*, No. W2013-00367-COA-R3-CV, 2014 WL 1153266, at *2 (Tenn. Ct. App. Mar. 20, 2014); *see also*, *e.g.*, *Wells Fargo Bank, N.A. v. Dorris*, 556 S.W.3d 745, 749 (Tenn. Ct. App. 2017) ("The timely filing of a notice of appeal of the general sessions court's judgment is mandatory 'and if it is not complied with the [circuit] court has no jurisdiction over the case.' 'If the appeal is not perfected within the ten-day period, the general sessions court's judgment becomes final and execution may issue.'" (citations omitted)).

Here, Ms. Brooks undisputedly did not file her appeal within the 10-day time period permitted by statute. Ms. Brooks argues that the 10-day requirement is inapplicable

[2] Subsection (d) of this statute was recently amended but does not affect our analysis. *See* 2023 Tennessee Laws Pub. Ch. 295 § 1.

because she was told she had 15 days to file the notice of appeal by the general sessions court judge. Even assuming for purposes of argument that Ms. Brooks is correct, she, nevertheless, did not file the notice of appeal from the general sessions court's March 3, 2022 decision to the circuit court until March 25, 2022. In other words, she filed later than the 15 days that she contends that she was entitled to because of a statement purportedly made by the general sessions court judge. As noted above, the 10-day requirement is jurisdictional. *Sturgis*, 415 S.W.3d at 846. Because Ms. Brooks's appeal was not timely filed, the circuit court did not have jurisdiction, and it properly dismissed the appeal. *See id*. Accordingly, we affirm the circuit court's dismissal of Ms. Brooks's appeal as untimely.

IV.

Ms. Brooks also raises on appeal a contention that "the judge" should have recused. She asserts that recusal was required because of a personal relationship between "the judge" and the parties. However, this issue is waived for failure to present a proper appellate argument, as it is not even clear which judge (circuit or general sessions) Ms. Brooks accuses of bias. *Sneed*, 301 S.W.3d at 615 (presenting a "skeletal argument" results in waiver). Nor is it clear what "personal relationship" Ms. Brooks is referencing in arguing that "the judge" should have recused. *See id.* Simply stated, Ms. Brooks has failed to provide sufficient information to allow for any meaningful assessment of the propriety of the judge, whether general sessions or circuit, failing to recuse.

Additionally, the record contains no reference to Ms. Brooks seeking recusal. There is no motion seeking recusal or ruling in connection with recusal. There is no discussion of recusal in the record. *See* Tenn. Sup. Ct. R. 10B § 2.01 ("If the trial court judge enters an order denying a motion for the judge's disqualification or recusal, or for determination of constitutional or statutory incompetence, the trial court's ruling either can be appealed in an accelerated interlocutory appeal as of right, as provided in this section 2, or the ruling can be raised as an issue in an appeal as of right, *see* Tenn. R. App. P. 3, following the entry of the trial court's judgment."). Appellate jurisdiction "necessarily implies that the issue has been formulated and passed upon in some inferior tribunal." *Duncan v. Duncan*, 672 S.W.2d 765, 767 (Tenn. 1984) (quoting *Fine v. Lawless*, 205 S.W. 124, 124 (1918)); *accord Frontz v. Hall*, No. E2021-00154-COA-R3-CV, 2022 WL 2161095, at *6 (Tenn. Ct. App. June 15, 2022), *perm app. denied* (Tenn. Aug. 18, 2022); *see also* Tenn. Code Ann. § 16-4-108 ("The jurisdiction of the court of appeals is appellate only. . . ."). As a general rule, issues raised for the first time on appeal are waived. *See*, *e.g.*, *Wallis v. Brainerd Baptist Church*, 509 S.W.3d 886, 898 (Tenn. 2016); *Fayne v. Vincent*, 301 S.W.3d 162, 171 (Tenn. 2009). There is nothing in the record that indicates that Ms. Brooks sought recusal of either the general sessions judge or circuit court judge. There is no basis for this court finding error where there is no indication in the record that the matter of recusal was raised with the general sessions judge or circuit court judge.

V.

On appeal before this court, Ms. Brooks also argues that she was not given proper notice of a hearing held on April 18, 2022, before the general sessions court,[3] after which a second judgment dismissing her cross-complaint was entered by the general sessions court. From the record before the court, there is no indication that Ms. Brooks ever appealed this second judgment to the circuit court nor raised the issue of lack of notice before the circuit court. Ms. Brooks in advancing this argument is attempting to challenge the actions of the general sessions court in an appeal of the decision of the circuit court.

Ms. Brooks's notice of appeal from the general sessions court to the circuit court specifies that she is appealing the circuit court's dismissal of the appeal from the general sessions court's judgment entered on March 3, 2022. There is no subsequent notice of appeal from the general sessions court to the circuit court contained in the record, nor is there any objection regarding notice in connection with the general sessions court's April 18, 2022 order that appears in the record relating to arguments before the circuit court. The circuit court never ruled on any purported action taken in the general sessions court in April, as the notice of appeal from general sessions to the circuit court was filed on March 25, 2022, and addressed the general sessions court's March 3, 2022 orders.

In a similar circumstance, when a party appealed a circuit court's dismissal of an appeal from general sessions court, this court stated it could not review the order of the general sessions court. *Sturgis*, 415 S.W.3d at 845. Then-Judge Kirby explained that our review does not extend to the purported errors made by the general sessions court but instead is limited to the question of whether dismissal by the circuit court was proper. *Id*. Furthermore, the record does not reflect that Ms. Brooks raised the issue of lack of notice below, and as noted above, issues raised for the first time on appeal are waived. *See*, *e.g.*, *Wallis*, 509 S.W.3d at 898; *Fayne*, 301 S.W.3d at 171. Simply stated, the issue of whether Ms. Brooks received proper notice from the general sessions court as to an April 18, 2022 hearing resulting in a second dismissal of her counter-claim is not properly before this court.

CONCLUSION

For the reasons discussed above, we affirm the judgment of the Circuit Court for Shelby County. Costs of the appeal are taxed to the Appellant, Lynnsay Brooks, for which

[3] FedTrust asserts that the April dismissal was unnecessary, as the matter was heard on March 3, 2022, and a prior order of dismissal of the cross-complaint was entered on that date. The record contains two orders dismissing the cross-complaint, one entered March 3, 2022, and one entered April 18, 2022. Ms. Brooks's brief does not appear to challenge for lack of notice the dismissal entered March 3, 2022.

execution may issue if necessary.

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JEFFREY USMAN, JUDGE