

FILED

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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 1, 2022 Session

DEBORAH LACY v. BIG LOTS STORES, INC. ET AL.

Appeal from the Circuit Court for Davidson County
No. 17C1360 William B. Acree, Senior Judge

No. M2019-00419-COA-R3-CV

A woman filed a complaint alleging she was assaulted at a retail store. Following a bench trial, the trial court concluded that the woman failed to prove her assault claim, and the woman appealed. Due to the deficiencies in the woman's appellate brief, this Court is unable to reach the substantive issues she raises, and we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

ANDY D. BENNETT, J., delivered the opinion of the Court, in which W. NEAL MCBRAYER and JEFFREY USMAN, JJ., joined.

Deborah Lacy, Madison, Tennessee, pro se.

Bradley Wayne Craig and Raymond Dale Bay, Nashville, Tennessee, for the appellees, Big Lots Stores, Inc., and Samuel Dowlen.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

On June 2, 2017, Deborah Lacy filed a complaint against Big Lots Stores, Inc. ("Big Lots") and Samuel Dowlen (collectively, "Defendants") alleging that she was assaulted at Big Lots while returning a sofa on June 2, 2016. Ms. Lacy claimed that, upon entering the store, she spoke with a cashier about receiving a refund for the sofa and was told that she would need to speak with the store manager, Cynthia Higgins. While waiting for Ms. Higgins to come to the front of the store, Ms. Lacy noticed Mr. Dowlen standing at another register. Ms. Lacy alleged that, when Ms. Higgins came to the front of the store and began the return process for the sofa, Mr. Dowlen walked up behind Ms. Lacy and stabbed her in the back with what "felt like a screwdriver."

The trial court heard the case on April 19, 2021. At the beginning of trial, the court addressed an omnibus motion in limine filed by Defendants requesting that the court not allow Ms. Lacy to present certain evidence. The parties agreed that the court should consider each evidentiary issue as it arose during the trial rather than the court issuing a preliminary ruling on all of the issues raised in the motion. Thereafter, Ms. Lacy proceeded with her case-in-chief by presenting her own testimony and by reading selected discovery responses into the record. At the close of her proof, Defendants moved for an involuntary dismissal. The court denied the motion, and Defendants presented their case-in-chief, which consisted of testimony from Mr. Dowlen and Ms. Higgins. After Ms. Lacy cross-examined both witnesses, the court took a brief recess, and upon returning from the recess, Ms. Lacy attempted to introduce several documents into evidence. The court reviewed each document, considered Defendants' objections to the documents, and issued a ruling excluding all of the documents.

At the conclusion of all the proof, the court made an oral ruling that Ms. Lacy failed to prove by a preponderance of the evidence that an assault occurred or that she suffered any injury. In making its ruling, the court noted that Ms. Lacy and Mr. Dowlen had conflicting testimony about what transpired on June 2, 2016, and the court stated several reasons for why it found Ms. Lacy's testimony not credible.¹ The court then directed Defendants' counsel to prepare the final order and to attach and incorporate by reference a copy of the transcript of the court's oral ruling. Defendants' attorney complied with the court's request, and the final order was entered on April 29, 2021.

ANALYSIS

Because Ms. Lacy's appellate brief is woefully deficient and mostly incomprehensible, we are unable to reach her substantive issues. We acknowledge that Ms. Lacy is a pro se litigant and that this Court has stated the following principles about pro se litigants:

¹ Regarding Ms. Lacy's testimony, the court found as follows:

There are several things giving the Court some difficulty. First, there is no motive proved or even suggested as to why this happened. The evidence does establish that the object, if it happened, did not pierce your [Ms. Lacy] skin. You did not bleed. You attempted to go to the doctor a few days later but you received no treatment. You did not go to another doctor until 2017, the next year. All of that suggests that whatever may have happened to you was not a serious injury. Or perhaps it did not happen. There was no police report made sometime thereafter. No one was arrested.

Also of significance is the lack of evidence and record of any report made. One would think that if one were injured in a store by the employee, you would say to the cashier or to the manager, whoever you're speaking with, so and so stabbed me, I want to make a report, I'm injured. But nothing of that nature was done.

Parties 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.

Young v. Barrow, 130 S.W.3d 59, 62-63 (Tenn. Ct. App. 2003) (citations omitted); *see also Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct App. 2003). Additionally, we allow pro se litigants some latitude in preparing their briefs by applying less exacting standards than those applied to briefs drafted by lawyers. *Young*, 130 S.W.3d at 63.

Defendants contend that, even allowing Ms. Lacy some latitude, her appellate brief is so deficient we should consider her issues waived. We agree. Tennessee Rule of Appellate Procedure 27 governs the content of appellate briefs. Subsection (a) of that rule identifies the requirements for the appellant's brief and provides, in pertinent part, as follows:

The brief of the appellant shall contain under appropriate headings and in the order here indicated:

- (1) A table of contents, with references to the pages in the brief;
- (2) A table of authorities, including cases (alphabetically arranged), statutes and other authorities cited, with references to the pages in the brief where they are cited;
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- (4) A statement of the issues presented for review;
- (5) A statement of the case, indicating briefly the nature of the case, the course of proceedings, and its disposition in the court below;
- (6) A statement of facts, setting forth the facts relevant to the issues presented for review with appropriate references to the record;
- (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 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);
- (8) A short conclusion, stating the precise relief sought.

Likewise, Rule 6 of the Rules of the Court of Appeals provides, in pertinent part:

- (a) Written argument in regard to each issue on appeal shall contain:
- (1) A statement by the appellant of the alleged erroneous action of the trial court which raises the issue and a statement by the appellee of any action of the trial court which is relied upon to correct the alleged error, with citation to the record where the erroneous or corrective action is recorded.
 - (2) A statement showing how such alleged error was seasonably called to the attention of the trial judge with citation to that part of the record where appellant's challenge of the alleged error is recorded.
 - (3) A statement reciting wherein appellant was prejudiced by such alleged error, with citations to the record showing where the resultant prejudice is recorded.
 - (4) A statement of each determinative fact relied upon with citation to the record where evidence of each fact may be found.
- (b) No complaint of or reliance upon action by the trial court will be considered on appeal unless the argument contains a specific reference to the page or pages of the record where such action is recorded. No assertion of fact will be considered on appeal unless the argument contains a reference to the page or pages of the record where evidence of such fact is recorded.

Here, Ms. Lacy cites to no legal authority in support of her various arguments. In the argument section of her brief, she cites to the previous eleven cases in which she was a party, but she provides no analysis of those cases and fails to discuss how they relate to any of her arguments. Thus, these paltry and inapplicable citations fail to overcome the fact that she cited to no other legal authority to support her arguments. Because Ms. Lacy neither develops any of her arguments nor cites to any legal authority supporting her positions, her brief is mostly unintelligible ramblings. Generally, when a party fails to cite to relevant authority, we consider that issue waived. *Bean v. Bean*, 40 S.W.3d 52, 55-56 (Tenn. Ct. App. 2000). This Court stated in *Newcomb v. Kohler Company*, 222 S.W.3d 368, 400 (Tenn. Ct. App. 2006), that “[a] skeletal argument that is really nothing more than an assertion will not properly preserve a claim[.]” We have no duty “to verify unsupported allegations in a party’s brief or to research and construct the party’s argument.” *Chiozza v. Chiozza*, 315 S.W.3d 482, 489 (Tenn. Ct. App. 2009) (citing *Bean*, 40 S.W.3d at 56).

Rule 2 of the Tennessee Rules of Appellate Procedure permits this Court to waive these briefing requirements if good cause exists.² *Id.* However, we do not believe good

² Rule 2 of the Tennessee Rules of Appellate Procedure provides, in pertinent part:

For good cause, including the interest of expediting decision upon any matter, the Supreme Court, Court of Appeals, or Court of Criminal Appeals may suspend the requirements or provisions of any of these rules in a particular case on motion of a party or on its motion and may order proceedings in accordance with its discretion

cause exists in this case. This is not Ms. Lacy's first experience with this Court. She has filed numerous appeals in the last seven years.³ Indeed, in two of those previous appeals, we warned her that she must comply with the briefing requirements but then waived the requirements in those instances to address the merits of her appeals. *See Lacy v. HCA Tristar Hendersonville Hosp.*, 2018 WL 575346, at *5-6 (Tenn. Ct. App. Jan. 26, 2018); *Lacy v. Hallmark Volkswagen*, 2017 WL 2929502, at *1-3 (Tenn. Ct. App. July 10, 2017); *see also Lacy v. Vanderbilt Univ. Med. Ctr.*, No. M2018-00832-COA-R3-CV, 2019 WL 1450390 (Tenn. Ct. App. Apr. 1, 2019) (dismissing appeal for Ms. Lacy's failure to comply with briefing requirements). Despite our previous warnings, Ms. Lacy continues her refusal to comply with this Court's briefing requirements which results in our inability to understand her arguments or reach the merits of her case. We, therefore, deem Ms. Lacy's issues waived and dismiss the appeal.

CONCLUSION

For the forgoing reasons, the appeal is dismissed. Costs of this appeal are assessed against the appellant, Deborah Lacy, for which execution may issue if necessary.

/s/ Andy D. Bennett
ANDY D. BENNETT, JUDGE

³ *See Lacy v. Vanderbilt Univ. Med. Ctr.*, No. M2018-00832-COA-R3-CV, 2019 WL 1450390 (Tenn. Ct. App. Apr. 1, 2019); *Lacy v. HCA Tristar Hendersonville Hosp.*, No. M2017-01055-COA-R3-CV, 2018 WL 575346 (Tenn. Ct. App. Jan. 26, 2018); *Lacy v. Meharry Gen. Hosp.*, No. M2016-01477-COA-R3-CV, 2017 WL 6501915 (Tenn. Ct. App. Dec. 19, 2017); *Lacy v. Hallmark Volkswagen Inc. of Rivergate*, No. M2016-02366-00A-R3-CV, 2017 WL 2929502 (Tenn. Ct. App. July 10, 2017); *Lacy v. HCA Health Serv. of TN, Inc.*, No. M2016-01027-COA-R3-CV, 2017 WL 1944351 (Tenn. Ct. App. May 10, 2017); *Lacy v. Saint Thomas Hosp. West*, No. M2016-01272-COA-R3-CV, 2017 WL 1827021 (Tenn. Ct. App. May 4, 2017); *Lacy v. Vanderbilt Univ. Med. Ctr.*, No. M2016-02014-COA-R3-CV, 2017 WL 6273316 (Tenn. Ct. App. May 4, 2017); *Lacy v. Mitchell*, 541 S.W.3d 55 (Tenn. Ct. App. 2016); *Lacy v. HCA Tristar Hendersonville Hosp.*, No. M2015-02217-COA-R3-CV, 2016 WL 4497953 (Tenn. Ct. App. Aug. 25, 2016).