IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 1, 2023

JAMIE M. LAZAROFF (COONS) v. DAVID A. LAZAROFF, SR.

Appeal from the Chancery Court for Rutherford County
No. 06-1022DR Bonita J. Atwood, Chancellor

No. M2022-01004-COA-R3-CV

This post-divorce appeal concerns the trial court's finding of contempt against the father for his failure to pay child support and the court's calculation of his support arrearage owed. We affirm.

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

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which W. NEAL MCBRAYER and KENNY ARMSTRONG, JJ., joined.

David A. Lazaroff, Sr., Brooksville, Florida, pro se appellant.

Wm. Kennerly (Ken) Burger, Murfreesboro, Tennessee, for the appellee, Jamie M. Lazaroff (Coons).

OPINION

I. BACKGROUND

Jamie M. Lazaroff (Coons) ("Mother") and David A. Lazaroff, Sr. ("Father") married in January 2001. Two children were born of the marriage, one in March 2001 and another in May 2002 (collectively "the Children"). The parties separated in December 2002.

Mother filed a petition for divorce on June 22, 2006, in Rutherford County, Tennessee. Mother alleged, inter alia, that Father had exhibited violent and erratic behavior and that his whereabouts were currently unknown. Father did not respond to the petition or appear at the hearing on the petition. The trial court granted a divorce by default to Mother on January 10, 2008, designating Mother as the primary residential parent with the

exclusive control of the Children. The court further enjoined Father "from any contact with [the Children], pending his application to the Court for relief." The court reserved the issue of child support pending Father's eventual location.

Father was located in Arizona, and on October 1, 2008, the Arizona Superior Court established a monthly child support obligation against him in the amount of $610.77, beginning on October 1, 2008. The order further provided that Father was permitted to claim the eldest child as a dependent for tax purposes when current with his support obligation. Father requested custody of the Children. His request was dismissed.

Father located Mother in Kentucky and petitioned the court in Kentucky for custody and designation as the primary residential parent. The court summarily dismissed his petition on June 19, 2009.

Mother filed the instant action on June 18, 2019, in Rutherford County, Tennessee. Mother, who resided in Kentucky, alleged that Father, who resided in Georgia, had not remitted support since 2009 in accordance with the Arizona support order. She sought orders of civil and criminal contempt for Father's failure to pay, an order establishing his support arrearage in accordance with the Arizona order, and attorney's fees.[1] Father responded and filed his own counter-petition, alleging that the remaining minor child has lived with him since May 2019. Father further claimed that he remitted child support through an Arizona Title IV-D office until the court closed the case due to Mother's absence and failure to collect payments.

Mother responded to the counter-petition, alleging that the minor child would soon attain the age of majority and was not currently living with either parent. Mother claimed that there were no legitimate pending factual or legal issues between the parties other than the court's computation of the support arrearage and its imposition of an enforcement remedy for his failure to pay. Accordingly, Mother also moved for summary judgment, asserting that no material issues of fact remained for the court's consideration.

Father then moved to amend his counter-petition, alleging that Mother wrongfully claimed the eldest child as a dependent for tax purposes. Father submitted proof of his payments from June 1, 2008, through July 27, 2011, for a total amount of $20,242.57. After retaining new counsel, he also filed a motion to dismiss for lack of personal and subject matter jurisdiction.

The case proceeded to a hearing on the motions to dismiss and for summary judgment, at which Mother claimed that she is domiciled in Tennessee but lives in another state as a result of her current husband's military service. The court denied the motion to

[1] Issues pertaining to Father's involvement with the remaining minor child were also raised at that time but are not at issue on appeal.

dismiss, finding that Father submitted himself to the jurisdiction of the court by filing his own counter-petition and that the court was required to give full faith and credit to the Arizona support order submitted by the parties, thereby establishing its subject matter jurisdiction. However, the court denied Mother's motion for summary judgment, finding that issues of fact remained as to the amount of support owed.

The case proceeded to a final hearing, at which the court considered Mother's application for a judgment for the claimed support arrearage, her motion for contempt for Father's failure to pay in accordance with the Arizona order, and Father's counter-petition.[2] The court ruled in favor of Mother, crediting her testimony over that of Father's due to his contradictory false statements elicited in cross-examination. The court found that the Arizona order established Father's monthly support obligation of $610.77, for a total support amount of $86,118.57. The court credited Father for his payments and calculated his remaining arrearage at $69,017.01. The court found that Father was aware of his ongoing duty to remit support but willfully and purposefully chose not to remit support. Accordingly, the court held Father in contempt for his failure to pay and ordered him to serve 90 days in jail.[3] The court awarded Mother attorney's fees in the amount of $6,100.

Thereafter, the parties entered into an agreed order, whereby Father's sentence was suspended entirely based upon an immediate payment of $20,000 and his agreement to pay the remaining balance on the judgment within 90 days of the agreement. Father agreed to submit to a lien on both of his properties, which would be released upon his final payment in satisfaction of the judgment. Father, appearing pro se, filed this timely appeal.[4]

II. ISSUES

A. Whether this appeal should be dismissed.

B. Whether the court abused its discretion in finding Father in willful contempt of the child support order and in setting the amount owed.

C. Whether Mother is entitled to her attorney's fees on appeal.

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[2] No transcript is available for this court's review. The trial court rejected Father's proposed statement of the evidence, holding that the findings of fact in the court's order and the factual statements contained in the motion for summary judgment provide a fair, accurate, and complete account of what transpired with respect to the issues raised on appeal. *See* Tenn. R. App. P. 24(e).

[3] The court suspended the consecutive service of 70 days of his 90-day sentence conditioned upon Father's payment of $20,000 by a date certain. The court advised that the 70 days may be served on consecutive weekends so long as Father made regular payments on the balance remaining.

[4] Father remitted payment in satisfaction of the judgment during the pendency of this appeal.

III. STANDARD OF REVIEW

We review a non-jury case de novo upon the record, with a presumption of correctness as to the findings of fact unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000). "In order for the evidence to preponderate against the trial court's findings of fact, the evidence must support another finding of fact with greater convincing effect." *Wood v. Starko*, 197 S.W.3d 255, 257 (Tenn. Ct. App. 2006). This presumption of correctness applies only to findings of fact and not to conclusions of law. *Campbell v. Fla. Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996). The trial court's conclusions of law are subject to a de novo review with no presumption of correctness. *Blackburn v. Blackburn*, 270 S.W.3d 42, 47 (Tenn. 2008); *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). The trial court's determinations regarding witness credibility are entitled to great weight on appeal and shall not be disturbed absent clear and convincing evidence to the contrary. *Morrison v. Allen*, 338 S.W.3d 417, 426 (Tenn. 2011).

Regarding contempt matters specifically, "[a] trial court's use of its contempt power is within its sound discretion and will be reviewed by an appellate court under an abuse of discretion standard." *McLean v. McLean*, No. E2008-02796-COA-R3-CV, 2010 WL 2160752, at *3 (Tenn. Ct. App. May 28, 2010) (citing *Outdoor Mgmt., LLC v. Thomas*, 249 S.W.3d 368, 377 (Tenn. Ct. App. 2007)). Likewise, we review a trial court's award of attorney fees by an abuse of discretion standard. *Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011). Although this appeal primarily involves a contempt action, to the extent that child support issues are also involved, we review those decisions "using the deferential 'abuse of discretion' standard" as well. *Richardson v. Spanos*, 189 S.W.3d 720, 725 (Tenn. Ct. App. 2005). "An abuse of discretion occurs when the trial court . . . appl[ies] an incorrect legal standard, reaches an illogical result, resolves the case on a clearly erroneous assessment of the evidence, or relies on reasoning that causes an injustice." *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011).

IV. DISCUSSION

A.

At the outset, we must address Mother's argument wherein she requests dismissal of this appeal based on Father's failure to comply with the mandatory provisions of Rule 27(a) of the Tennessee Rules of Appellate Procedure and Rule 6 of the Rules of the Court of Appeals of Tennessee. Rule 27 of the Tennessee Rule of Appellate Procedure provides, in pertinent part, that the appellant's brief "shall contain:"

(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 . . . 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.

Tenn. R. App. P. 27(a). Additionally, Rule 6 of the Tennessee Court of Appeals states:

(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 such 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.

Tenn. Ct. App. R. 6(a) and (b).

Rather than follow the Tennessee Rules of Appellate Procedure, Father has presented an extended narrative of his relationship with Mother filled with allegations, testimony, and claims for relief not presented to the trial court. First, we must inform Father that the jurisdiction of this court is "appellate only." Tenn. Code Ann. § 16-4-108. Appellate courts "cannot exercise original jurisdiction" and act as the "trier-of-fact." *Peck v. Tanner*, 181 S.W.3d 262, 265 (Tenn. 2005) (citations omitted); *see also Pierce v. Tharp*, 461 S.W.2d 950, 954 (Tenn. 1970) (rejecting appellants' "novel" request to adduce proof in support of their motion). Further, "[t]he law in Tennessee is well settled that issues not raised in the trial court may not be raised on appeal." *Blankenship v. Anesthesiology Consultants Exch., P.C.*, 446 S.W.3d 757, 760 (Tenn. Ct. App. 2014); *see also Jackson v. Burrell*, 602 S.W.3d 340, 344 (Tenn. 2020).

Next, we must address the state of the brief. The brief, inter alia, lacks a statement of the issues presented for review, appropriate references to the record in the statement of the facts, appropriate references to the record in the argument, and a statement of the applicable standard(s) of review. Tenn. R. App. P. 27(a). Issues not included in the statement of the issues are not properly before this court. *Hawkins v. Hart*, 86 S.W.3d 522, 531 (Tenn. Ct. App. 2001). Here, no issues were specifically presented for our consideration as required by our Rules of Appellate Procedure.

Generally, we only consider the issues that are properly raised, argued, and supported with relevant authority. *See id.* at 531 ("[F]or an issue to be considered on appeal, a party must, in his brief, develop the theories or contain authority to support the averred position."); *see also* Tenn. R. App. P. 13(b) ("Review generally will extend only to those issues presented for review."). Plaintiff has failed to comply with the majority of Rule 27(a) of the Tennessee Rule of Appellate Procedure and Rule 6 of the Rules of the Court of Appeals. Ordinarily, "failure to comply with the Rules of Appellate Procedure and the Rules of this Court" constitutes a waiver of the issues raised by the appellant. *Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000).

We believe that the aforementioned shortcomings in the brief are due, in part, to Father's status as a pro se litigant on appeal. This court "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, 63 (Tenn. Ct. App. 2003) (citing *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996)). It is well-settled that "[w]hile a party who chooses to represent himself or herself is entitled to the fair and equal treatment of the courts, [p]ro se litigants are not . . . entitled to shift the burden of litigating their case[s] to the courts." *Chiozza v. Chiozza*, 315 S.W.3d 482, 487 (Tenn. Ct. App. 2009) (internal citations omitted). However, "[t]he courts give pro se litigants who are untrained in the law a certain amount of leeway in drafting their pleadings and briefs." *Young*, 130 S.W.3d at 63. Although this appeal is subject to dismissal due to Father's significantly deficient brief, we nonetheless exercise our discretion to review the trial court's decision on appeal. *See* Tenn. R. App. P. 2 (providing that this court may suspend

the requirements or provisions on its own motion).

B.

Father admits that the Arizona support order was a valid order, imposing a child support obligation of approximately $610 per month. Father claims that the total amount owed should be modified to reflect his past changes in income and the time in which the Children resided with him or without either parent. This claim does not comport with Tennessee Code Annotated section 36-5-101(f)(1)(A),[5] which provides as follows:

> Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state, and shall be entitled to full faith and credit in this state and in any other state. [Absent agreement by the parties], such judgment shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties. If the full amount of child support is not paid by the date when the ordered support is due, the unpaid amount that is in arrears, shall become a judgment for the unpaid amounts, and shall accrue interest[.]

Father claims in his brief that he "applied to have" his support obligation reduced in Arizona but that his "request" was denied because he was unable to locate and serve Mother. The record is devoid of any evidence establishing that a separate action for modification of his obligation was filed in any state and that notice of such an action was mailed to Mother. However, Father filed a counter-petition in October 2019, alleging that the youngest child no longer lived with Mother. The trial court held that his petition was unfounded and not supported by any evidence. With these considerations in mind, we affirm the trial court's calculation of the child support arrearage.

Father next argues that he should not be held in contempt for his failure to pay when the Arizona child support office stopped accepting his payments due to Mother's failure to collect. This argument is without merit. Mother's failure to collect did not obviate the child support order. Further, "[e]very parent who is eighteen (18) years of age or older is presumed to have knowledge of a parent's legal obligation to support such parent's child or children." Tenn. Code Ann. § 36-1-102(1)(H).

Lastly, Father requests relief from his payment of Mother's attorney's fees at trial. The granting of attorney's fees in such cases is authorized by Tennessee Code Annotated section 36-5-103(c), providing that:

[5] "In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply[.]" 28 U.S.C.A. § 1738B.

> (c) A prevailing party may recover reasonable attorney's fees, which may be fixed and allowed in the court's discretion, from the non-prevailing party in any criminal or civil contempt action or other proceeding to enforce, alter, change, or modify any decree of alimony, child support, or provision of a permanent parenting plan order, or in any suit or action concerning the adjudication of the custody or change of custody of any children, both upon the original divorce hearing and at any subsequent hearing.

Tennessee courts long have recognized that the decision to grant attorney's fees under section 36-5-103(c) is largely within the discretion of the trial court. After a review of the circumstances at issue, we find no abuse of discretion on this ground.

C.

Mother asks for an award of attorney fees on appeal. Tennessee follows the American Rule which provides that "litigants pay their own attorney's fees absent a statute or an agreement providing otherwise." *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 194 (Tenn. 2000); *accord Taylor v. Fezell*, 158 S.W.3d 352, 359 (Tenn. 2005).

Tennessee Code Annotated section 27-1-122, provides that:

> When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

Tenn. Code Ann. § 27-1-122.

The decision whether to award damages for a frivolous appeal rests solely in our discretion. *Chiozza*, 315 S.W.3d at 493. Appellate courts exercise their discretion to award fees under this statute "'sparingly so as not to discourage legitimate appeals.'" *Eberbach v. Eberbach*, 535 S.W.3d 467, 475 (Tenn. 2017) (quoting *Whalum v. Marshall*, 224 S.W.3d 169, 181 (Tenn. Ct. App. 2006)). "'Successful litigants should not have to bear the expense and vexation of groundless appeals.'" *Whalum*, 224 S.W.3d at 181 (quoting *Davis v. Gulf Ins. Grp.*, 546 S.W.2d 583, 586 (Tenn. 1977)). "A frivolous appeal is one that is 'devoid of merit,' or one in which there is little prospect that it can ever succeed." *Indus. Dev. Bd. v. Hancock*, 901 S.W.2d 382, 385 (Tenn. Ct. App. 1995). Exercising our discretion in such matters, we respectfully deny Mother's request for attorney's fees on appeal.

V. CONCLUSION

For the reasons stated above, we affirm the decision of the trial court. The case is remanded for such further proceedings as may be necessary. Costs of the appeal are taxed to the appellant, David A. Lazaroff, Sr.

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JOHN W. MCCLARTY, JUDGE