

FILED

08/17/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs August 1, 2023

LARRY SHORT v. ROGER ALSTON

**Appeal from the Circuit Court for Hardeman County
No. 22-CV-5 J. Weber McCraw, Judge**

No. W2022-00666-COA-R3-CV

The appeal is dismissed due to the fact that Appellant's brief wholly fails to comply with Tennessee Rule of Appellate Procedure 27(a). In addition, there is no transcript or Tennessee Rule of Appellate Procedure 24(c) statement of the evidence, thus negating this Court's ability to review the trial court's substantive findings.

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

KENNY ARMSTRONG, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and THOMAS R. FRIERSON, II, J., joined.

Larry Z. Short, Lexington, Tennessee, appellant, pro se.

Roger Alston, Bolivar, Tennessee, appellee, pro se.¹

OPINION

This lawsuit involves Appellant Larry Z. Short's attempt to recover a framed document that was purportedly left in a rented U-Haul moving trailer.² Appellee Roger Alston was the owner of the U-Haul. Mr. Short initially filed suit against Mr. Alston in the Hardeman County General Sessions Court. On January 26, 2022, the general sessions judge dismissed Mr. Short's lawsuit, and he appealed to the Circuit Court for Hardeman County ("trial court"). According to the trial court's final order, *see infra*, Mr. Short alleged "that he accidentally left the property in the trailer and that Mr. Alston should have found the document and returned it to him. However, the document was supposedly

¹ Appellee did not file a brief in this appeal.

² According to Appellant's brief, the "document" was "an English indenture of the 17th century worth approximately \$5,000."

discarded and not to be found.” On May 12, 2022, the trial court entered judgment in favor of Mr. Alston on its finding that Mr. Short failed to carry his burden of proof. Specifically, the trial court held that

Mr. Short could not present witnesses as to what happened to his document and could not show that Mr. Alston has caused the misplacement of the framed document. On the other hand, Mr. Alston presented the rental agreement which placed responsibility on Mr. Short to clean the trailer prior to its return.

Although, as discussed *infra*, Mr. Short failed to properly state the issue(s) on appeal, we perceive that there is one dispositive issue, which is whether the evidence preponderates against the trial court’s finding that Mr. Short failed to carry his burden of proof. Unfortunately, we do not reach this issue due to procedural problems with Mr. Short’s appellate brief and the absence of a transcript or Tennessee Rule of Appellate Procedure 24(b) statement of the evidence.

Before addressing Mr. Short’s appellate brief, we first note that, although we are cognizant that Mr. Short is proceeding pro se, it is well-settled that “pro se litigants are held to the same procedural and substantive standards to which lawyers must adhere.” ***Brown v. Christian Bros. University***, No. W2012-01336-COA-R3-CV, 2013 WL 3982137, at *3 (Tenn. Ct. App. Aug. 5, 2013), *perm. app. denied* (Tenn. Jan. 15, 2014). While a party who chooses to represent himself or herself is entitled to the fair and equal treatment of the courts, ***Hodges v. Tenn. Att’y Gen.***, 43 S.W.3d 918, 920 (Tenn. Ct. App. 2000), “[p]ro se litigants are not . . . entitled to shift the burden of litigating their case to the courts.” ***Whitaker v. Whirlpool Corp.***, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000).

Turning to Mr. Short’s brief, the contents of appellate briefs are governed by Rule 27 of the Tennessee Rules of Appellate Procedure. According to the rule, the Appellant’s brief shall contain:

- (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;
- (3) A jurisdictional statement in cases appealed to the Supreme Court directly from the trial court indicating briefly the jurisdictional grounds for the appeal to the Supreme Court;
- (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.

Tenn. R. App. P. 27(a). Additionally, Rule 6 of the Tennessee Rules of the Court of Appeals also requires an appellate brief to contain a written argument in regard to each issue on appeal, with a statement of the alleged erroneous action of the trial court, as well as a specific reference to the record where such action is recorded. The Rule further provides:

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. R. Ct. App. 6(b).

Here, Mr. Short's entire brief is as follows:

RECEIVED
MAR 30 2023
Clerk of the Appellate Courts
Rec'd By

FILED
MAR 30 2023
Clerk of the Appellate Courts
Rec'd By *HW*
3/28/23

To: The office of the Supreme Court of TN

Supreme Court Building

6 HWY 45 Bypass

Jackson, TN 38301

FROM: Larry Z. Short

9 Woodland

Homes

Lexington, TN

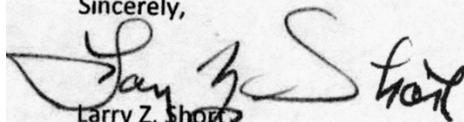
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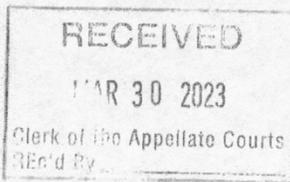
SUBJECT: Brief

I hope this will qualify as a the "missing brief"? I had a retired lawyer do the first, but he is now deceased, and his wife cannot find a file copy.

I am NOT an attorney, and this is an amateur's approach at a legal brief.

Sincerely,


Larry Z. Short



IN THE SUPREME COURT OF TENNESSEE

LARRY ZANE SHORT

Plaintiff

TN Supreme Court

V.

TN Supreme Court

Jackson, Tennessee

W2022-0066-COA-R3ROGER AL

ROGER ALSTON

Defendant

STATEMENT OF FACT

In 2021, I went to Bolivar Hardware, in Bolivar, TN, to rent a U-HAUL truck from Roger Alston, the owner. I returned the truck the next night. In the back of the truck laying flat on the bed was an English indenture of the 17th century worth approximately \$ 5 000 dollars. I returned the next day about 2:30 in the afternoon, but the hardware store was closed.

I returned again THE NEXT BUSINESS DAY, Monday, and the owner, ROGER ALSTON STATED IN AN AGGRESSIVE TONE THAT HE HAD KEPT IT SEVERAL DAYSM THEN THREW IT IN THE TRASH DUMPSTER. HE STATED FURTHER THAT HE THREEW AN OLD TV ON TOP OF IT, AND THAT BROKE THE GLASS AND THE FRAME. HE ELABORATED THAT THE DUMPSTER HAD JUST BEEM CARRIED TO THE LANDFILL.

Steve Benton Witness

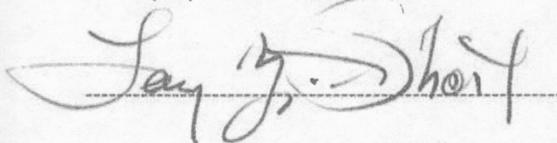
I had a witness to this conversation, STEVE BENTON, 1097 Main Street, Lexington, TN 38351. He had helped me move furniture in the U-HAUL truck. On previous court hearings, he was out of town, and my case was dismissed.

This indenture was on parchment dated 1541. In the left corner was a detailed illustration of Charles I of England and the Latin inscription "By grace of God, Charles rules Britannia" England, Scotland, Ireland, and Wales). The text was in an unfamiliar language, probably Garlic or an older dialect of Scottish language? The indenture was in an elaborate custom made frames that cost \$ 240 in 1980.

In today's market, this item would be valued at approximately \$ 4 000 at auction.

CERTIFICATE OF COMPLIANCE

I CERTIFY THAT I HAVE TRIED TO COMPLY WITH THE PROCESS OF THE Tennessee court requirements in the preparations of this brief.

 DATE 29 March 2023

Witness  Date 3-29-23

Mr. Short's brief is wholly noncompliant with the requirements of Rule 27 of the Tennessee Rules of Appellate Procedure. There is no: (1) "table of contents, with references to the pages in the brief," Tenn. R. App. P. 24(a)(1); (2) "table of authorities, including cases (alphabetically arranged), statutes and other authorities cited, with references to the pages in the brief where they are cited, Tenn. R. App. P. 24(a)(2); (3) "jurisdictional statement," Tenn. R. App. P. 24(a)(3); (4) "statement of the issues presented for review," Tenn. R. App. P. 24(a)(4); (5) "statement of the case, indicating briefly the nature of the case, the course of proceedings, and its disposition in the court below," Tenn. R. App. P. 24(a)(5); (6) "statement of facts, setting forth the facts relevant to the issues presented for review with appropriate references to the record, Tenn. R. App. P. 24(a)(6); (7) "argument . . . setting forth . . . 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," Tenn. R. App. P. 24(a)(7); "argument . . . setting forth . . . for each issue, a concise statement of the applicable standard of review. . .," *Id.*; or "short conclusion, stating the precise relief sought," Tenn. R. App. P. 27(a)(8). Courts have routinely held that the failure to comply with even one of the Rule 27 requirements constitutes a waiver of the appellate issue. *See, e.g., Forbess v.*

Forbess, 370 S.W.3d 347, 355 (Tenn. Ct. App. 2011) (quoting *Bean v. Bean*, 40 S.W.3d 52, 55-56 (Tenn. Ct. App. 2000)); see also *Tellico Village Property Owners Ass'n, Inc. v. Health Solutions, LLC*, No. E2012-00101-COA-R3-CV, 2013 WL 362815, at *3 (Tenn. Ct. App. Jan. 30, 2013). Likewise, “[w]here a party makes no legal argument and cites no authority in support of a position, such issue is deemed waived and will not be considered on appeal.” *Branum v. Akins*, 978 S.W.2d 554, 557 n. 2 (Tenn. Ct. App. 1998) (internal citations omitted).

Because Mr. Short fails to comply with the basic briefing requirements set out in the Tennessee Rules of Appellate Procedure, this Court cannot ascertain the gravamen of his arguments. As this Court has previously stated:

“[T]his Court is not charged with the responsibility of scouring the appellate record for any reversible error the trial court may have committed.” [*Owen v. Long Tire, LLC*, No. W2011-01227-COA-R3-CV, 2011 WL 6777014, at *4 (Tenn. Ct. App. Dec. 22, 2011)]. “It 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.” *Sneed v. Bd. of Prof'l Responsibility of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010).

“[T]he Supreme Court has held that it will not find this Court in error for not considering a case on its merits where the plaintiff did not comply with the rules of this Court.” *Bean*, 40 S.W.3d at 54-55 (citing *Crowe v. Birmingham & N.W. Ry. Co.*, 156 Tenn. 349, 1 S.W.2d 781 (1928)). “[A]ppellate courts may properly decline to consider issues that have not been raised and briefed in accordance with the applicable rules.” *Waters v. Farr*, 291 S.W.3d 873, 919 (Tenn. 2009). “We have previously held that a litigant’s appeal should be dismissed where his brief does not comply with the applicable rules, or where there is a complete failure to cite to the record.” *Commercial Bank, Inc. v. Summers*, No. E2010-02170-COA-R3-CV, 2011 WL 2673112, at *2 (Tenn. Ct. App. July 11, 2011).

Clayton v. Herron, No. M2014-01497-COA-R3-CV, 2015 WL 757240, at *2-3, (Tenn. Ct. App. Feb. 20, 2015).

Mr. Short’s failure to comply with any of the provisions of Tennessee Rule of Appellate Procedure 27(a) is fatal to his appeal. However, even if we could overlook his failure to brief, there is nothing in the record to review. Rule 24 of the Tennessee Rules of Appellate Procedure outlines the requirements concerning both content and preparation of the appellate record, to wit:

(a) The record on appeal **shall** consist of: (1) copies, certified by the clerk of the trial court, of all papers filed in the trial court except as hereafter provided; (2) the original of any exhibits filed in the trial court; (3) the transcript or statement of the evidence or proceedings, which shall clearly indicate and identify any exhibits offered in evidence and whether received or rejected. . . .

* * *

(b) ...the appellant shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues on appeal.

(Emphasis added). If no transcript is available, Tennessee Rule of Appellate Procedure 24 provides that “the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant’s recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal.” Tenn. R. App. P. 24(c).

We are a reviewing Court. In cases such as this, where the trial was held by the court sitting without a jury, we review the evidence adduced at the hearing to determine whether it preponderates against the trial court’s ultimate conclusions, and the burden is on the Appellant to show that the evidence preponderates against the judgment of the trial court. *Coakley v. Daniels*, 840 S.W.2d 367, 370 (Tenn. Ct. App. 1992) (citing *Capital City Bank v. Baker*, 442 S.W.2d 259, 266 (Tenn. Ct. App. 1969)). “The burden is likewise on the appellant to provide the court with a transcript of the evidence or a statement of the evidence from which this court can determine if the evidence does preponderate for or against the findings of the trial court.” *Id.* It is well settled that in cases where no transcript or statement of the evidence is filed, the appellate court is required to presume that the record, had it been properly preserved, would have supported the action of the trial court. *See Fayne v. Vincent*, 301 S.W.3d 162, 169-170 (Tenn. 2009) (“[W]hen an issue of sufficiency of the evidence is raised on appeal, we must presume, in the absence of a record of the proceedings, that the transcript or statement of the evidence, had it been included in the record, would have contained sufficient evidence to support the trial court’s factual conclusions.”); *Reinhardt v. Neal*, 241 S.W.3d 472, 477 (Tenn. Ct. App. 2007) (explaining that in the absence of a transcript or statement of the evidence, the appellate court had to presume that the evidence supported the trial court’s findings and ultimate conclusion that there was a failure of proof); *Outdoor Mgmt., LLC v. Thomas*, 249 S.W.3d 368, 377 (Tenn. Ct. App. 2007) (noting the “conclusive presumption that there was sufficient evidence before the trial court to support its judgment” if no transcript or statement of the evidence is submitted); *Sherrod v. Wix*, 849 S.W.2d 780, 783 (Tenn. Ct. App. 1992) (“This court cannot review the facts de novo without an appellate record containing the facts, and therefore, we must assume that the record, had it been preserved, would have contained

sufficient evidence to support the trial court's factual findings.”). Accordingly, even if we excused Mr. Short’s inadequate briefing, in the absence of a transcript or statement of the evidence, we would have affirmed the trial court’s judgment.

For the foregoing reasons, the appeal is dismissed. Costs of the appeal are assessed to the Appellant, Larry Short. Because Mr. Short is proceeding *in forma pauperis* in this appeal, execution for costs may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE