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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 3, 2023

TEAL PROPERTIES, INC. v. DOG HOUSE INVESTMENTS, LLC, ET AL.

Appeal from the Circuit Court for Davidson County

No. 17C2547, 20C2239 Kelvin D. Jones, Judge

No. M2022-00128-COA-R3-CV

This appeal arises from a series of civil actions between a tenant and its landlord. The first action resulted in a ruling that the landlord was “merely a sham or dummy corporation” and “the alter ego” of its sole shareholder. *See Dog House Investments, LLC v. Teal Properties, Inc., et al.*, 448 S.W.3d 905, 911 (Tenn. Ct. App. 2014). The second action resulted in a settlement agreement that entitled the prevailing party in future lease disputes to an award of related attorney’s fees. The third and present action commenced in 2017 with each party suing the other on various grounds in different courts. Following a consolidation of the pending actions, the case was tried by a jury, which ruled in favor of the tenant, Dog House Investments, LLC, (“Dog House”) on the merits. Thereafter, Dog House filed a motion to recover its attorney’s fees and costs as the prevailing party pursuant to the 2014 settlement agreement, and the trial court awarded Dog House \$292,168.84 in attorney’s fees and costs. This appeal followed. The sole issue on appeal is the amount of the attorney’s fees awarded. Finding no abuse of discretion, we affirm. Because Dog House is also entitled to recover the reasonable and necessary attorney’s fees it incurred in successfully defending this appeal, we remand for further proceedings consistent with this opinion.

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

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ARNOLD B. GOLDIN, and KRISTI M. DAVIS, JJ., joined.

Jerry L. Teal, Manchester, Tennessee, pro se appellant.¹

¹ Teal Properties, Inc., did not file a brief and is not a party to this appeal.

Gregory H. Oakley and J. Brad Scarbrough, Nashville, Tennessee, for the appellee, Dog House Investments, LLC.

OPINION

FACTS AND PROCEDURAL HISTORY

Teal Properties, Inc., (“TPI”) is the owner of a 9,000 square foot office/warehouse space on Craighead Street in Nashville, Tennessee (“the Property”). Since 2008, TPI has leased the Property to Dog House. Dog House is a franchisee that operates “Camp Bow Wow Nashville,” a dog day care and boarding facility. This is the third court action between the parties related to their lease.

Dog House initiated the first action in 2011, alleging that TPI breached the lease agreement by failing to submit insurance claims following a flood on the Property. *See Dog House Investments, LLC v. Teal Properties, Inc., et al.*, 448 S.W.3d 905, 910 n.1, 911 (Tenn. Ct. App. 2014). Dog House also sought to pierce TPI’s corporate veil and hold its sole shareholder, Jerry L. Teal (“Mr. Teal”), personally liable. *Id.* The trial court ruled in favor of Dog House and found that TPI was “merely a sham or dummy corporation” and “the alter ego” of Mr. Teal. *Id.* We affirmed the judgment in all respects on appeal. *Id.* at 918.

The second action between the parties commenced in May of 2014 when Dog House filed a declaratory judgment action against TPI and Mr. Teal. Shortly thereafter, TPI filed a detainer warrant, seeking to regain possession of the Property. After being consolidated, those cases were resolved in September 2014 when the parties entered into a settlement agreement that provided:

Should a dispute arise over the enforceability of or for breach or failure to perform this Agreement or the Lease, as amended, the prevailing party in such dispute, shall be entitled to recover from the non-prevailing party all of its costs, expenses and attorney’s fees, related to such a dispute and the Lawsuit.

The third and present action arose in October 2017 when TPI filed a breach of contract claim against Dog House.² In response, Dog House asserted various claims against TPI and Mr. Teal.³ After Dog House prevailed on its motion for summary judgment and

² TPI also named Steve Lassiter and Nancy Purvis, the owners of Dog House, as defendants. The trial court dismissed Lassiter and Purvis from the suit because they had no individual liability under the terms of the lease. Dog House was left as the sole defendant.

³ These included breach of lease claims against TPI and Mr. Teal for failing to repair the Property or reimburse Dog House for expenses incurred from floods in 2017, 2019, and 2020.

all issues presented to the jury, the trial court entered a final judgment against TPI and Mr. Teal, jointly and severally, in the amount of \$100,403.08 plus \$20,179.57 in prejudgment interest. Pursuant to the settlement agreement, the trial court also awarded Dog House \$292,168.64 in attorney's fees and expenses as the prevailing party.

Mr. Teal timely filed a notice of appeal on his own behalf; however, no notice of appeal was filed on behalf of TPI. We note, however, that Mr. Teal, who is not a licensed attorney, purportedly filed an appellate brief on behalf of TPI. Tennessee law precludes a corporation's nonlawyer officer or agent from representing a corporation in a legal proceeding. *Old Hickory Eng'g & Mach. Co. v. Henry*, 937 S.W.2d 782, 786 (Tenn. 1996); *Bivins v. Hosp. Corp. of Am.*, 910 S.W.2d 441, 447 (Tenn. Ct. App. 1995) ("An attempted appeal of a person not licensed to practice law, purporting to represent another, will be dismissed."); *see also* Tenn. Sup. Ct. R. 7, § 1.01; Tenn. Code Ann. § 23-3-101. As a consequence, the brief Mr. Teal attempted to file on behalf of TPI is a nullity.⁴

Accordingly, TPI is not a party to this appeal. As a consequence, the judgment against TPI is res judicata.

ISSUES

Mr. Teal raises one issue on appeal: Did the trial court abuse its discretion by awarding Dog House \$292,168.84 in attorney's fees?

STANDARD OF REVIEW

Because a trial court has the discretion to determine whether to award attorney's fees, reviewing courts will uphold that determination unless it finds that the trial court has abused its discretion. *Wright ex rel. Wright v. Wright*, 337 S.W.3d 166, 176 (Tenn. 2011) (citing *Kline v Eyrich*, 69 S.W.3d 197, 203 (Tenn. 2002)). "Thus, reviewing courts will set aside a discretionary decision only when the court that made the decision applied incorrect legal standards, reached an illogical conclusion, based its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the

⁴ Mr. Teal also attempted to file a motion on behalf of Teal Properties, Inc. In an order entered on August 25, 2022, this court struck the motion. The order reads in pertinent part:

Allowing Mr. Teal to file a motion on behalf of Teal Properties, Inc. would be permitting the unauthorized practice of law. Filings by a person not entitled to practice law purporting to represent another are a nullity. *Vandergriff v. Park Ridge East Hosp.*, 482 S.W.3d 545, 554 (Tenn. Ct. App. 2015) (quoting *Bivins v. Hosp. Corp. of Am.*, 910 S.W.2d 441, 447 (Tenn. Ct. App. 1995)). It is, therefore, ordered that the motion filed on behalf of Teal Properties, Inc. is stricken.

complaining party.” *Konvalinka v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 249 S.W.3d 346, 358 (Tenn. 2008).

In Tennessee, there is no “fixed mathematical rule” for a court to determine what is reasonable. *Wright*, 337 S.W.3d at 176 (quoting *Killingsworth v. Ted Russell Ford, Inc.*, 104 S.W.3d 530, 534 (Tenn. Ct. App. 2009)). Ultimately, “the trial court’s determination of reasonable attorney’s fee is a ‘subjective judgment based on evidence and the experience of the trier of facts.’” *Id.* (quoting *United Med. Corp. of Tenn., Inc. v. Hohenwald Bank & Trust Co.*, 703 S.W.2d 133, 137 (Tenn. 1986)). Accordingly, reviewing courts may not “merely substitute its judgment for that of the trial court.” *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998).

ANALYSIS

I. ATTORNEY’S FEES AWARDED BY THE TRIAL COURT

Mr. Teal does not dispute that Dog House is entitled to attorney’s fees, but he takes issue with the amount of fees awarded and the trial court’s rationale supporting that amount. Mr. Teal argues that the trial court awarded attorney’s fees without inquiring into the reasonableness and necessity of the services that Dog House’s attorneys performed. Mr. Teal also contends that it was unnecessary for Dog House to have four competent attorneys working on this case.

Dog House responds that Mr. Teal waived these issues on appeal by not raising them in the trial court. Moreover, Dog House contends that Mr. Teal’s arguments are meritless because the trial court made sufficient findings in its final order.

It is not the duty of an appellate court to research or construct a party’s argument. *Newcomb v. Kohler Co.*, 222 S.W.3d 368, 401 (Tenn. Ct. App. 2006) (citing *United States v. Berkowitz*, 927 F.2d 1376, 1384 (7th Cir. 1991)). Rather, it is the duty of the appellant, in constructing his or her brief, to include “citations to the authorities and appropriate references to the record.” Tenn. R. App. P. 27(a)(7)(A). Similarly, Rule 6 of the Rules of the Court of Appeals of Tennessee requires litigants to include citations to the record when alleging what errors the trial court committed, how the errors were raised to the trial court, how the errors resulted in prejudice, and statements or assertions of determinative fact. If a party fails to cite any authority or construct an argument supporting the issue, then the party waives the issue on appeal. *Newcomb*, 222 S.W.3d at 401; *see also Bean v. Bean*, 40 S.W.3d 52, 55–56 (Tenn. Ct. App. 2000) (citations omitted) (“Courts have routinely held that the failure to make appropriate references to the record and to cite relevant authority in the argument section of the brief as required by Rule 27(a)(7) constitutes a waiver of the issue.”).

This court is mindful that pro se litigants “are entitled to fair and equal treatment by the courts.” *Cannistra v. Brown*, No. M2021-00833-COA-R3-CV, 2022 WL 4461772, at

*4 (Tenn. Ct. App. Sept. 26, 2022) (citing *Vandergriff v. ParkRidge E. Hosp.*, 482 S.W.3d 545, 551 (Tenn. Ct. App. 2015)). However, pro se litigants may not “shift the burden of litigating their case to the courts.” *Id.* (citing *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000)). Moreover, pro se litigants still must largely comply with Rule 27(a)’s requirements. *Murray v. Miracle*, 457 S.W.3d 399, 404 (Tenn. Ct. App. 2014). “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.’” *Cannistra*, 2022 WL 4461772, at *4 (quoting *Murray*, 457 S.W.3d at 402).

On December 3, 2021, Dog House filed a motion for attorney’s fees pursuant to the 2014 settlement agreement. After the trial court set a hearing on Dog House’s motion for attorney’s fees, Mr. Teal filed a response in opposition to the motion to award Dog House its attorney’s fees.⁵ He also asked that the hearing be postponed because he would be unable to attend due to “extreme neuropathy in [his] feet, which is caused by latent insulin dependent diabetes.” Ostensibly, Mr. Teal could not walk.

In order to accommodate Mr. Teal, the trial court provided Mr. Teal with a Zoom link so he could virtually participate in the hearing. When the motion came on for hearing as scheduled, Mr. Teal failed to appear in person or virtually. The trial court waited for more than an hour before hearing the motion without Mr. Teal’s participation. In the interim, the trial court called Mr. Teal three times and left Mr. Teal two messages that included a phone number to call to be added to the Zoom hearing. Mr. Teal never called into the Zoom hearing. Mr. Teal did, however, email the trial court to inform the court that he would not be participating. The hearing then proceeded without Mr. Teal’s participation.

In its order regarding attorney’s fees, the trial court found Paragraph 10 of the Settlement Agreement to be binding on the parties.⁶ The trial court also concluded that Dog

⁵ The response, which addressed more than Dog House’s request for attorney’s fees, was titled “MOTION TO DENY DEFENDANTS EXPEDITED HEARING ON DOG HOUSE’S MOTION TO SPECIALLY SET TEAL’S MOTION TO REVIEW PREVIOUSLY DENIED MOTION FOR NEW TRIAL AND DISBURSEMENT OF BOND FUNDS.” Within this response, Mr. Teal identified paragraph 5 as follows: “Pursuant to Local Rule 26.04, Plaintiff Jerry Teal submits the following response to the Motion for Entry of Order Awarding Attorney’s Fees and Costs (the “Motion”) filed by John Brad Scarbrough and Greg Oakley. The specific grounds upon which the Motion is opposed are stated below.”

⁶ The trial court also noted that, prior to the jury trial, the parties stipulated that the trial court would determine who was the prevailing party, who was entitled to attorney’s fees, and the appropriate amount of attorney’s fees to be awarded.

House was “without question” the prevailing party in this dispute and was contractually entitled to attorney’s fees.

After considering the relevant factors in *Connors v. Connors*, 594 S.W.2d 672, 677 (Tenn. 1980) and Tennessee Supreme Court Rule 7, RPC 1.5, the trial court expressed in its analysis that

[t]he time, labor and skill necessary in order to litigate [this case] favors the award requested, as much of the time and labor required was necessary due to TPI and Mr. Teal’s litigation tactics, which unnecessarily increased the time and cost of the instant litigation. By taking on the representation of Dog House in litigating these cases and having to try the consolidated cases before a Jury over several days, such employment precluded the attorneys for Dog House from taking on other employment. The amount involved and the results obtained also favored an award of the amount of fees requested by Dog House. Not only did Dog House successfully defend against two cases filed by TPI against Dog House for breach of the Lease and to evict Dog House, but Dog House also prevailed on its counterclaims brought in both cases, and has obtained an award of more than \$100,000 in damages, plus prejudgment interest.

In reaching the \$292,168.84 total, the trial court found that the total amount of attorney’s fees sought was appropriate because Dog House’s attorneys’ hourly rates ranging from \$225 to \$400 were commensurate with the rates charged by other Nashville attorneys with roughly twenty to thirty years of legal experience. The trial court noted that the reason why so many hours had been expended in this case is “self-evident and can be gleaned from the many filings, motion hearings, jury trial and post-trial motions.”

After reviewing Mr. Teal’s brief, we have determined that it is profoundly deficient in several respects. While Mr. Teal quotes case law and the relevant Rule of the Tennessee Supreme Court in laying the foundation for an argument, he does not point this court to concrete examples or record citations that indicate which services were unnecessary or which fees were unreasonable. Rather, Mr. Teal’s argument merely finds fault with what he considers a lack of inquiry on the part of the trial court. This is readily evident from a review of Mr. Teal’s argument which we quote below.

After quoting from *Connors v. Connors*, 594 S. W.2d 672, and Tennessee Supreme Court Rule 8, Mr. Teal’s appellate argument reads as follows:

Two issues affect the assessment of fees. The record in this case is convoluted, involving three cases between the parties — a 2014 litigation, a 2017 litigation, and a 2020 litigation. The Appellee had four attorneys involved, all with varying degrees of experience and expertise, to wit: Attorney Oakley had been practicing law for 28 years, Attorney Knight for

25 years, Attorney Scarbrough for 21 years and Attorney Holleman for 19 years. Considering the skill level of these attorneys, was it necessary to have multiple attorneys with this level of competence to work on this case and whether the services overlapped.

The Appellant cannot take issue if these licensed members of the Tennessee Bar expended the time and effort as set forth in their respective affidavits. What the Connors decision failed to consider as one of the factors was whether all of the services were reasonable under the circumstances? Everyone has heard the analogy of how many people does it take to change a light bulb. With four attorneys involved, the trial court should have made an inquiry as to the reasonableness of services performed. The four attorneys may have very well culled out duplicative services, but the record is void of such an inquiry. Instead, the trial court rubber stamped the Appellee's attorney's fee declaration. Further evidence of this is found in the body of the state court order where a carte blanche claim of four hours for the drafting of the order, without any itemization.

The Connors decision also failed to address an additional issue whether the services were necessary to the outcome of the litigation. Necessity is the hallmark of the determination of attorney's fees. A study of intellectual law might be a fascinating inquiry, but it is totally irrelevant to this litigation. With three different cases in controversy, the trial court bypassed its inherent obligation to determine the nature and extent of the fees awarded to the Appellee's counsel.

In conclusion, the trial court made no inquiry as to the fees awarded to the Appellee's counsel. Instead, these fees were approved with no oversight. How can an award of attorney's fees be justified if a court does not take even the rudimentary steps to inquire. For the reasons outlined herein, this case must be remanded to the trial court for further review.

Because Mr. Teal is proceeding pro se in this appeal, we “afford some degree of leeway” in considering Mr. Teal’s arguments. *Cannistra*, 2022 WL 4461772, at *4 (citing *Young v. Barrow*, 130 S.W.3d 482, 491 (Tenn. 2015)). But it is not the duty of this court to scour the record, which includes 100-plus pages of billing records, in search of services by Dog House’s attorneys that may have been duplicative, excessive, or unwarranted. If we were to do so, we would be assuming Mr. Teal’s burden of creating a factually integrated argument. *See id.* (quoting *Murray*, 457 S.W.3d at 402) (“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.’”). Instead, it is the duty of the appellant, in constructing his or her brief, to include “citations to the authorities and appropriate

references to the record.” Tenn. R. App. P. 27(a)(7)(A). It is not the duty of an appellate court to research or construct a party’s argument. *See Newcomb*, 222 S.W.3d at 401.

Due to Mr. Teal’s omission of any citations to the record or factual support for his arguments, he has waived his right to appeal the amount of attorney’s fees awarded. *See Newcomb*, 222 S.W.3d at 401 (“The failure of a party to cite to any authority or to construct an argument regarding his position on appeal constitutes waiver of that issue.”).

For the foregoing reasons, we affirm the judgment of the trial court in all respects.

II. ATTORNEY’S FEES INCURRED ON APPEAL

Dog House seeks to recover the reasonable and necessary attorney’s fees incurred in connection with this appeal and requests this court to remand the case to the trial court for a determination of the appropriate amount of fees.

Contractual agreements for attorney’s fees “must be enforced as written regardless of whether parties are before a trial court or an appellate court.” *Eberbach v. Eberbach*, 535 S.W.3d 467, 478 (Tenn. 2017). Courts must enforce “the terms of the parties’ agreement govern[ing] the award of fees . . . to the extent the agreement demands.” *Id.* When a party is entitled to an award of appellate attorney’s fees, we may grant the request and set the amount or grant the request and remand to the trial court to set the amount. *See Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d at 411 n.2.

The 2014 Settlement Agreement reads:

Should a dispute arise over the enforceability of or for breach or failure to perform this Agreement or the Lease, as amended, the prevailing party in such dispute, shall be entitled to recover from the non-prevailing party all of its costs, expenses and attorney’s fees, related to such dispute.

This action undoubtedly “arises” out of the lease, and Dog House is the prevailing party on appeal. Accordingly, we remand this issue to the trial court to award Dog House its reasonable and necessary attorney’s fees and costs incurred on appeal.

IN CONCLUSION

The judgment of the trial court is affirmed in all respects, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against Jerry L. Teal for which execution may issue.

FRANK G. CLEMENT JR., P.J., M.S.