

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
Assigned On Briefs May 12, 2015

**ERASTUS JAMES MUMMERY v. MARK LUCKO, ET AL.**

**Direct Appeal from the Circuit Court for Montgomery County  
No. MCCCCVMC-12-2809 Ross H. Hicks, Judge**

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**No. M2013-00336-COA-R3-CV – Filed May 27, 2015**

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This is an appeal from the trial court’s dismissal of Appellant’s complaint in a negligence case. After Appellant’s case was dismissed, he filed a notice of appeal *pro se*. Significant procedural shortcomings in Appellant’s brief on appeal prevent this Court from reaching any substantive issues. We therefore affirm.

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

BRANDON O. GIBSON, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY ARMSTRONG, J., joined.

Erastus James Mummery, Clarksville, Tennessee, *Pro se*.

Sheri S. Phillips, Clarksville, Tennessee, for the appellees, Mark Lucko and Rookies Bar.

**MEMORANDUM OPINION<sup>1</sup>**

**OPINION**

**I. Background**

Appellant Erastus James Mummery (“Mummery”) sued Appellees Mark Lucko (“Lucko”) and Rookies Bar (“Rookies”) in the Circuit Court for Montgomery County on

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<sup>1</sup>Rule 10 of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION”, shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

or about November 15, 2012. In his complaint, filed *pro se*, Mummery appeared to allege that Lucko and Rookies should be held liable to Mummery in tort for negligently allowing an underage girl to enter Rookies because “Defendants are responsible for who are in there [sic] place of business.”

On December 4, 2011, Mummery entered Rookies, which is Lucko’s place of business. The establishment sells and serves alcoholic beverages and purportedly had a sign posted on the door that stated “21 years old or older only.” Mummery claimed that he met a young girl that night who he believed to be at least twenty-one years old, based on the posted sign. Mummery proceeded to have sexual relations with the girl, who was actually only seventeen years old, in the parking lot of Rookies. Subsequently, Mummery was charged with statutory rape and sentenced to serve six years in prison. His complaint seeks to recover for damages allegedly sustained as a result of the statutory rape conviction and six-year prison sentence.

The circuit court determined Mummery to be indigent and allowed the complaint to be filed; however, the court, on its own motion, dismissed the complaint for failure to “state any cognizable cause of action.”<sup>2</sup> The court also stated that the complaint was meritless and frivolous and ordered that no process should issue in the case. Mummery appeals.

## II. Issues

Appellant appears before this Court *pro se*, as he appeared before the circuit court. His brief on appeal is severely deficient and fails to clearly state the issues he is attempting to raise on appeal. In fact, Appellant’s brief does not specifically raise any issue on appeal. In their brief, Appellees specifically raise the issue of Appellant’s lack of compliance with Tennessee Rule of Appellate Procedure 27, in addition to asserting that the trial court’s dismissal of Appellant’s complaint was appropriate.

## III. Discussion

In considering this appeal from the trial court’s dismissal, this Court reviews findings of fact *de novo* upon the record of the trial court with a presumption of

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<sup>2</sup>Tennessee Code Annotated section 20-12-132(a) provides: “If it is made to appear to the court, at any time before the trial, that the allegation of poverty is probably untrue, *or the cause of action frivolous or malicious*, the action may be dismissed.” Tenn. Code Ann. § 20-12-132(a) (emphasis added); *see also Reid v. Power*, No. E2012-02480-COA-R3CV, 2013 WL 3282916, at \*3 (Tenn. Ct. App. June 26, 2013) (*no perm. app. filed*) (noting the language of Tenn. Code Ann. § 20-12-132 and further noting that a court may properly dismiss an action for failure to state a claim upon which relief could be granted, either on motion or sua sponte).

correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *In re F.R.R. III*, 193 S.W.3d 528, 530 (Tenn. 2006). However, we review questions of law *de novo* with no presumption of correctness. *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn.2002).

We recognize that Appellant is proceeding *pro se* and that many *pro se* litigants have no legal training and may have little familiarity with the judicial system. *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988). Parties who decide to represent themselves are entitled to fair and equal treatment by the courts; however, “[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). While courts give such *pro se* litigants a certain amount of leeway in drafting their briefs, we cannot excuse *pro se* litigants from complying with substantive and procedural rules with which represented parties are expected to adhere. *Young v. Barrow*, 130 S.W.3d 59, 62-63 (Tenn. Ct. App. 2003), citing *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996).

Although we have given Appellant the benefit of the doubt, his brief on appeal contains procedural shortcomings that prevent this Court from reaching any substantive issues. The Tennessee Rules of Appellate Procedure dictate the form and contents of a party’s brief. Specifically, Rule 27(a) provides that the brief of the appellant *shall* contain the following under the proper headings:

- (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). Appellant's brief clearly fails to comply with these provisions, as it consists of three pages in its entirety and includes no headings or required sections. It merely restates facts alleged in his complaint in bulleted paragraphs. The brief fails to state any issues for review, as required by Tenn. R. App. P. 27(a)(4).

Most notably, the brief fails to cite to the record or to any authority supporting his position, as required by Rule 27(a)(7). In *Bean v. Bean*, this Court observed, "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." *Bean v. Bean*, 40 S.W.3d 52, 55-56 (Tenn. Ct. App. 2000). As previously stated, Appellant's brief merely recites the alleged facts in his complaint, and it fails to provide anything resembling a legal argument. Absolutely no citation to the record or to any case, statute, or other authority is included. The only thing that is clear from the brief is that Appellant is unhappy with the trial court's order. It is not the function of this Court to research and construct a party's argument. *Chiozza v. Chiozza*, 315 S.W.3d 482, 489 (Tenn. Ct. App. 2009).

Because Appellant failed to comply with Tenn. R. App. P. 27 in any significant way, he has waived any issues he may have attempted to raise on appeal.

#### **IV. Conclusion**

For the foregoing reasons, the decision of the trial court is hereby affirmed. Costs of this appeal are taxed to the appellant, Erastus James Mummery. Because Erastus James Mummery is proceeding *in forma pauperis* in this appeal, execution may issue if necessary.

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BRANDON O. GIBSON, JUDGE