Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0667-MR

CHRISTINA REBENNACK, AS ADMINISTRATRIX OF THE ESTATE OF JOEL REBENNACK, DECEASED; CHRISTINA REBENNACK; CHRISTINA REBENNACK, AS MOTHER AND NEXT FRIEND OF MELANIE REBENNACK AND ARIANNA REBENNACK; AND ELIJAH REBENNACK — APPELLANTS

v.

APPEAL FROM BOONE CIRCUIT COURT
HONORABLE RICHARD A. BRUEGGEMANN, JUDGE
ACTION NO. 16-CI-00203

WESTCHESTER FIRE INSURANCE COMPANY — APPELLEE

ORDER
DISMISSING

* * * * * *

BEFORE: EASTON, KAREM, AND TAYLOR, JUDGES.

On April 27, 2026, by order of this Court, this appeal was held in abeyance. On this Court's own motion, the Court ORDERS that the appeal shall be returned to the active docket.

The parties have filed a joint motion to dismiss however; the Court finds it necessary to address issues related to Appellant's brief before ruling upon that motion.

RAP 32(A)(4) requires:

> An **argument** conforming to the statement of points and authorities, with ample references to the specific location in the record and citations of authority pertinent to each issue of law and which shall contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

The appellant in the case *sub judice* falls far short of adhering to this rule. Appellants not only failed to cite the record, but they also failed to consistently provide citations of authority pertinent to each issue of law or to make any preservation statement.

Surprisingly, it appears that counsel's failure to adhere to RAP 32(A)(4) and provide citations to the record, was not due to ignorance of the rule, but rather it was the result of a strategic decision. As a matter of point, Christina's brief states:

> the actual facts of the underlying dispute are largely immaterial, except for background context and, to a very limited extent, except as necessary to show how any particular fact may have been used under the wrong legal standard. As a result, citations to the record are largely omitted, unless deemed material to the issue on appeal.

And, true to their word, only twelve citations to the record appear in the Statement

of the Case and no citations were made in the remainder of the initial brief or the reply brief. Moreover, in response to Westchester's observation that no citations to the record were presented by Appellants in the Arguments section of their initial brief, rather than correcting the error in the Reply, Appellants doubled down stating:

> [Appellants] contend[] that any extensive citation to the factual record is functionally meaningless as long as the parties are unable to agree on the applicable standard against which we are to evaluate those facts.

It bears repeating that this case has already made its way through this Court once with discretionary review denied by the Supreme Court. Thus, the record *sub judice* is substantial, comprised of three boxes holding 29 bound volumes, 19 depositions, and multiple sealed packets. The Court has neither the time nor the desire to search through the record for factual references made by the Appellants.

Additionally, as Westchester pointed out, many times throughout Appellants' brief, Appellants stated what is presumed to be a legal proposition but failed to cite any legal authority for support. As an example, Appellants simply stated "[b]ecause summary judgments involve no fact finding, an appellate court reviews a circuit court's decision de novo." No legal authority was cited.

> It is a dangerous precedent to permit appellate advocates to ignore procedural rules. Procedural rules "do not exist for the mere sake of form and style. They are lights and

> buoys to mark the channels of safe passage and assure an expeditious voyage to the right destination. Their importance simply cannot be disdained or denigrated." *Louisville and Jefferson County Metropolitan Sewer Dist. v. Bischoff,* 248 S.W.3d 533, 536 (Ky.2007)(quoting *Brown v. Commonwealth,* 551 S.W.2d 557, 559 (Ky.1977)). Enforcement of procedural rules is a judicial responsibility of the highest order because without such rules "[s]ubstantive rights, even of constitutional magnitude, ... would smother in chaos and could not survive." *Id.*

Hallis v. Hallis, 328 S.W.3d 694, 696 (Ky. Ct. App. 2010).

Were we to rule on the merits of this appeal, the sanctions available to this Court as provided in the Kentucky Rules of Appellate Procedure ("RAP") are as follows:

> [F]ailure of a party to substantially comply with the rules is ground for such action as the appellate court deems appropriate, which may include:
> (1) A deficiency notice or order directing a party to take specific action,
> (2) A show cause order,
> (3) Striking of filings, briefs, record or portions thereof,
> (4) Imposition of fines on counsel for failing to comply with these rules of not more than $1,000,
> (5) A dismissal of the appeal or denial of the motion for discretionary review, and
> (6) Such further remedies as are specified in any applicable rule.

RAP 10(B).

Finally, Appellants made no preservation statement. Rather, Appellant used the unique phrase "ASSIGNMENT OF ERROR," the substance of

which bears no resemblance to that of a preservation statement as it was devoid of any reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

Failure to make a preservation statement can cause the issue to be treated as unpreserved. "If a party fails to inform the appellate court of where in the record his issue is preserved, the appellate court can treat that issue as unpreserved" and review the issue solely for palpable error resulting in manifest injustice. *Ford v. Commonwealth*, 628 S.W.3d 147, 155 (Ky. 2021). *See also* CR[1] 61.02. An error resulting in manifest injustice has been explained to be an error so serious it affected the fairness, integrity, or public reputation of the proceeding and thus would be considered "shocking or jurisprudentially intolerable." *Martin v. Commonwealth,* 207 S.W.3d 1, 4 (Ky. 2006).

As identified herein, the Court has multiple tools at its disposal to address Appellants' deficient brief. Should the briefing errors perpetuated in the case *sub judice* be repeated by counsel in any subsequent appeal before this Court, we will not refrain from employing sanctions ranging from fining counsel to striking counsel's brief, or both.

IT IS FURTHER ORDERED, having reviewed the record available and being otherwise sufficiently advised, that the joint motion to dismiss be

[1] Kentucky Civil Rule of Procedure.

GRANTED. Accordingly, the above-styled appeal is hereby DISMISSED.

ENTERED: 11/02/2026

HON. ANNETTE C. KAREM
JUDGE, COURT OF APPEALS