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NOT TO BE PUBLISHED

# Commonwealth of Kentucky

# Court of Appeals

NO. 2016-CA-000196-MR

VICKIE MAHONEY — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MARY M. SHAW, JUDGE
ACTION NO. 10-CI-405188

THE BANK OF NEW YORK MELLON[1] — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER, CHIEF JUDGE; DIXON AND NICKELL, JUDGES.

KRAMER, CHIEF JUDGE: Vickie Mahoney, *pro se*, appeals from the January 2016 judgment of the Jefferson Circuit Court, which foreclosed on a piece of her

[1] In the notice of appeal, The Bank of New York Mellon is incorrectly spelled as "The Bank of New York Melon." We will use the correct spelling for the entirety of this opinion.

real property in favor of the Bank of New York Mellon. Finding no error, we affirm.

This foreclosure action followed Mahoney's default on a loan she obtained in 2006. At that time, Mahoney obtained a loan for $80,000 that was secured by a promissory note and a mortgage on the property which was subject to the ultimate foreclosure.[2] Mahoney made timely payments for approximately one year before defaulting for the first time in July 2007. After a lengthy negotiation period, in which she made no payments, Mahoney entered into a loan modification agreement in July 2009. Following that modification, she made the next two monthly payments; however, these would be the last two payments Mahoney ever made on the loan.

After acquiring the note, the Bank brought suit in 2010 to foreclose on the underlying mortgage. Mahoney counterclaimed asserting: (1) breach of the Kentucky Consumer Protection Act; (2) breach of contract; and (3) breach of the duty of good faith and fair dealing. Her counterclaims primarily focused on the purported fraud that took place during the process to modify her loan obligations. The circuit co followed.

[2] Although the Bank was not the original financial institution Mahoney secured the loan through, it became a holder in due course of the promissory note following a series of transactions that are irrelevant to the instant appeal.

At the outset, we note that the form and content of Mahoney's brief do not comply with the requirements set forth in CR[3] 76.12. Despite the mandates of CR 76.12(4)(c), the brief contains no "statement concerning oral argument," no "statement of points and authorities," no "statement of the case," no references to the record showing how the issues were preserved for appeal, and no citation to a statute nor any case law supporting her arguments on appeal. The argument section of the brief merely cites to pages of the circuit court's final order and disputes its factual findings. Furthermore, Mahoney included several documents in the appendix of her brief that were not in the record, which cannot be considered on appeal.

In *Hallis v. Hallis*, 328 S.W.3d 694, 696-97 (Ky. App. 2010), this Court explained,

> CR 76.12(4)(c)(v) requires that a brief contain:
>
> > An 'ARGUMENT' conforming to the statement of Points and Authorities, with ample supportive references to 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.
> >
> > Compliance with this rule permits a meaningful and efficient review by directing the reviewing court to the most important aspects of the appeal: what facts are

[3] Kentucky Rule of Civil Procedure.

> important and where they can be found in the record; what legal reasoning supports the argument and where it can be found in jurisprudence; and where in the record the preceding court had an opportunity to correct its own error before the reviewing court considers the error itself.

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 Cty. Metro. Sewer Dist. v. Bischoff*, 248 S.W.3d 533, 536 (Ky. 2007) (quoting *Brown v. Commonwealth*, 551 S.W.3d (Ky. 1977)). Without such procedural safeguards, [s]ubstantive rights, even of constitutional magnitude, . . . would smother in chaos and could not survive." *Id.* We have wide latitude to determine the proper remedy for a litigant's failure to follow the rules of appellate procedure. *Age v. Age*, 340 S.W.3d 88, 97 (Ky. App. 2011). "Our options when an appellate advocate fails to abide by the rules are: (1) to ignore the deficiency and proceed with the review; (2) to strike the brief or its offending portions, CR 76.12(8)(a); or (3) to review the issues raised in the brief for manifest injustice only . . . ." *Hallis*, 328 S.W.3d at 696 (citation omitted).

In considering the available options, we are not inclined to disregard the procedural deficiencies in Mahoney's brief. Mahoney has proceeded *pro se*, and while it is true we do not hold *pro se* litigants to as stringent of a standard as

we do licensed members of the bar, we do require them to follow the rules of civil procedure. *Louisville and Jefferson Cty. Metro. Sewer Dist.*, 248 S.W.3d at 537. The record on appeal is approximately 600 pages. We are not required to scour the record to find where it might provide support for Mahoney's claims. *Smith v. Smith*, 235 S.W.3d 1, 5 (Ky. App. 2006). Rather than strike the brief, we elect to review the issues for manifest injustice, which occurs if "the error so seriously affected the fairness, integrity, or public reputation of the proceeding as to be shocking or jurisprudentially intolerable." *Commonwealth v. Jones*, 283 S.W.3d 665, 668 (Ky. 2009) (internal quotations marks and citations omitted).

Aside from numerous unsubstantiated accusations against the Bank's business practices, Mahoney asserts no arguments that could warrant a reversal. This was simply a mortgage foreclosure case with counterclaims stemming from it. The Bank presented proof that: (1) it owned the note and mortgage; (2) Mahoney had defaulted on her obligation under the note; and (3) no fraud took place in the modification process. Given this evidence, which the circuit court found credible, the Bank was entitled to foreclose on Mahoney's property. Accordingly, there was no manifest injustice in the circuit court's judgment.

In light of the forgoing, we AFFIRM the judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Vickie Mahoney, *pro se*
Louisville, Kentucky

BRIEF FOR APPELLEES:

Edmund S. Sauer
Nashville, Tennessee