

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-001008-MR

ADAM K. MELLOR

APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT  
HONORABLE BRUCE T. BUTLER, JUDGE  
ACTION NO. 16-CI-00222

MELISSA MERRITT; AND  
TRAVEL GOOGAN, LLC

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, D. LAMBERT, AND MAZE, JUDGES.

DIXON, JUDGE: Adam K. Mellor, *pro se*, appeals from a summary judgment rendered by the Meade Circuit Court in favor of Appellees, Melissa Merritt and Travel Googan, LLC. We affirm.

Mellor, an attorney licensed to practice law in Ohio, received a postcard at his home in Vine Grove, Kentucky, advertising a “Southwest

Getaway.” The postcard instructed Mellor to call a toll-free number to claim an offer of two airline tickets and two-night hotel stay. Mellor called the toll-free number and learned he would have to attend a presentation at a local hotel to claim the advertised airline tickets. He attended the presentation and received additional paperwork indicating he could obtain the airline ticket vouchers by sending \$216.00 to a Virginia company, Eagles Palace Family Entertainment Center, LLC. Mellor did not send any money to Eagles Palace. Thereafter, Mellor investigated the origin of the postcard by tracing the postage permit to Global Direct Mail, a company operated by Appellee Merritt in Las Vegas, Nevada. Merritt is also the managing member of Travel Googan, a limited liability company registered in Nevada.

Mellor filed a complaint against Merritt and Travel Googan in Meade Circuit Court, seeking compensatory and punitive damages for a violation of the Kentucky Consumer Protection Act, unfair trade practices, and fraud by misrepresentation.<sup>1</sup> Mellor contended Appellees engaged in deceptive and fraudulent business practices by offering him a travel package without disclosing he would be obligated to pay Eagles Palace \$216.00 to claim the tickets. Following a period of discovery, Appellees moved for summary judgment.

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<sup>1</sup> Mellor also named in the complaint Eagles Palace Family Entertainment Center, LLC. Mellor ultimately obtained a default judgment against Eagles Palace after it failed to respond to the complaint. Eagles Palace is not a party to this appeal.

Appellees tendered the affidavit of Merritt, wherein she asserted a third party, Worldwide Travel Brokers, contracted with Travel Googan to print and mail postcards designed by Worldwide, to a list of recipients provided by Worldwide. According to Merritt, neither she nor any representative of Travel Googan were present at the seminar Mellor attended in Kentucky. The trial court subsequently granted summary judgment in favor of Appellees, and this appeal followed.

Mellor raises several arguments on appeal relating to the sufficiency of the evidence. He contends the circuit court misconstrued the evidence favorable to his claims and rendered summary judgment prematurely.

As an initial matter, we note Mellor's appellate brief does not comply with the requirements set forth in CR 76.12. The "Argument" portions of his brief contain no references to the record showing whether the issues were preserved for appellate review. CR 76.12(4)(c)(v). Further, the rule requires "ample" references to evidence in the record supporting the arguments presented. *Id.* Here, Mellor's brief presents fifteen pages of arguments, yet includes only a single citation to the record. It is well-settled that "[i]t is not our function as an appellate court to research and construct a party's legal arguments[.]" *Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005).

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

In considering the available options, we are mindful Mellor, although proceeding *pro se*, is an attorney licensed to practice law in Ohio. We are not inclined to simply ignore the deficiencies in Mellor’s brief. *See id.* 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 quotation marks and citation omitted).

It is evident Mellor’s statutory and common-law claims fail as a matter of law. Actual damages are defined as “an amount awarded to a complainant to compensate for a proven injury or loss; damages that repay actual losses.” BLACK’S LAW DICTIONARY (10th ed. 2014). Mellor did not incur any actual damages after receiving the postcard – it is undisputed he declined to pay \$216.00 to Eagles Palace. First, a claim under the Kentucky Consumer Protection Act requires an “ascertainable loss of money or property[.]” KRS 367.220(1).

Mellor also sought damages due to an alleged violation of KRS 365.055(1), which prohibits mailing marketing materials to the general public informing the recipient “he has won a prize[.]” If a person is injured by a violation of that statute, he may recover “three (3) times the amount of any actual damages sustained.” KRS 365.070(1). Likewise, a claim for fraud by misrepresentation requires proof of six elements, including that “the misrepresentation caused injury to the plaintiff.” *Giddings & Lewis, Inc. v. Industrial Risk Insurers*, 348 S.W.3d 729, 747 (Ky. 2011). “[F]raud is actionable only if it results in damage to the complainant.” *Gersh v. Bowman*, 239 S.W.3d 567, 573 (Ky. App. 2007).

Finally, Mellor’s claim for punitive damages also fails as a matter of law. KRS 411.184(2) provides that “[a] plaintiff shall recover punitive damages only upon proving, by clear and convincing evidence, that the defendant from whom such damages are sought acted toward the plaintiff with oppression, fraud or malice.” The record clearly indicates Mellor failed to produce any affirmative evidence to defeat Appellees’ motion for summary judgment. “A party’s subjective beliefs about the nature of the evidence is not the sort of affirmative proof required to avoid summary judgment.” *Haugh v. City of Louisville*, 242 S.W.3d 683, 686 (Ky. App. 2007). Furthermore, “[u]nsupported allegations are insufficient to create a genuine issue of material fact.” *de Jong v. Leitchfield*

*Deposit Bank*, 254 S.W.3d 817, 825 (Ky. App. 2007). We conclude the circuit court properly granted summary judgment in favor of Appellees.

For the reasons stated herein, the judgment of the Meade Circuit Court is affirmed.

ALL CONCUR

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEES:

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