

FOURTH COURT OF APPEALS OF TEXAS, SAN ANTONIO

Leola Stuart v. Estelita Judson

No. 04-14-00380-CV (Tex. App.—San Antonio Sept. 9, 2014) · No. No. 04-14-00380-CV · Decided September 9, 2014

SUMMARY

The Fourth Court of Appeals of Texas, San Antonio, struck the appellant's brief for flagrant violations of Texas Rule of Appellate Procedure 38.1. The court ordered the pro se appellant to file a compliant amended brief by September 19, 2014, and warned that failure to comply could result in further sanctions or dismissal of the appeal.

CASE DETAILS

COURT	Fourth Court of Appeals of Texas, San Antonio
WRITING FOR THE COURT	Marialyn Barnard
JURISDICTION	Texas
DECIDED	September 9, 2014
DOCKET	No. 04-14-00380-CV
DISPOSITION	other
PROCEDURAL POSTURE	Appellant filed a noncompliant appellate brief in an appeal from the County Court at Law No. 2 of Bexar County. The court struck the brief and ordered appellant to file an amended brief.
PRECEDENTIAL VALUE	Published opinion; no standard reporter citation appears in the provided text.
PARTIES	Leola Stuart v. Estelita Judson

TOPICS

[appellate procedure](#)[civil procedure](#)[sanctions](#)

PRACTICE AREAS

[appellate procedure](#)[civil procedure](#)

QUESTIONS PRESENTED

1. Whether appellant's appellate brief flagrantly violated Texas Rule of Appellate Procedure 38.1 so that the court could strike it and require an amended brief.
2. Whether a pro se litigant is held to the same appellate briefing standards as a licensed attorney.

HOLDINGS

1. A brief that flagrantly violates the requirements of Texas Rule of Appellate Procedure 38.1 may be stricken, and the appellate court may order the appellant to file an amended, compliant brief.
2. Pro se litigants are held to the same standards as licensed attorneys and must comply with applicable procedural and appellate briefing rules.

KEY QUOTATIONS

“Although substantial compliance with Rule 38.1 is generally sufficient, this court may order a party to amend, supplement, or redraw a brief if it flagrantly violates Rule 38.1.”

“However, the law is clear that pro se litigants are held to the same standards as licensed attorneys and must comply with all applicable rules of procedure, including the rules governing appellate briefs.”

FACTUAL BACKGROUND

Leola Stuart represented herself on appeal and filed an appellate brief on September 2, 2014. The brief omitted required components, including a table of contents, index of authorities, statement of issues, supported statement of facts, properly supported argument, and appendix, and the court could not determine the nature of the underlying action, the relief granted or denied, or the complaints asserted on appeal.

PROCEDURAL HISTORY

The appeal was taken from the County Court at Law No. 2, Bexar County, Texas, in trial court cause number 391869. After appellant filed her brief, the Fourth Court of Appeals determined that it flagrantly violated multiple requirements of Texas Rule of Appellate Procedure 38.1 and ordered the brief stricken and an amended brief filed by September 19, 2014.

DISPOSITION

other

REMAND INSTRUCTIONS

Appellant was ordered to file an amended brief correcting the listed violations and fully complying with the applicable rules by September 19, 2014. If the amended brief failed to comply, the court warned that it could strike the brief, prohibit another filing, proceed as if appellant had failed to file a brief, and potentially dismiss the appeal.

CASES CITED

- Valadez v. Avitia, 238 S.W.3d 843, 845 (Tex. App.—El Paso 2007, no pet.)

OPINION

PER CURIAM.

Fourth Court of Appeals San Antonio, Texas September 9, 2014 No. 04-14-00380-CV Leola STUART, Appellant v. Estelita JUDSON, Appellee From the County Court at Law No. 2, Bexar County, Texas Trial Court No. 391869 Honorable Tina Torres, Judge Presiding ORDER Appellant filed her brief on September 2, 2014.

The brief does not comply with Rule 38.1 of the Texas Rules of Appellate Procedure. See TEX. R. APP. P. 38.1. Specifically, the brief violates Texas Rule of Appellate Procedure 38 in that it does not: (1) include a table of contents; (2) include an index of authorities; (3) include a brief statement of the issues presented, setting out what errors were allegedly committed by the trial court; (4) include a statement of facts with record references; (5) include argument with appropriate citation to authorities and the appellate record; or (6) include an appendix.

See *id.* R. 38.1(b) (requiring table of contents), 38.1(c) (requiring index of authorities), 38.1(f) requiring statement of issues presented, 38.1(g) (requiring statement of facts with record reference), 38.1(i) (requiring argument with appropriate citation to authority and record; 38.1(k) (requiring appendix with copy of judgment or other appealable order, any jury charge and verdict form, any findings of fact and conclusions of law, and text of applicable rules, regulations, ordinances, statutes, constitutional provisions, or other law on which argument is based, or any contract or other document central to argument).

Moreover, we cannot discern from appellant's brief the nature of the action, the relief granted or denied below, nor the exact nature of the complaints appellant is asserting on appeal. Although substantial compliance with Rule 38.1 is generally sufficient, this court may order a party to amend, supplement, or redraw a brief if it flagrantly violates Rule 38.1.

See *id.* R. 38.9(a). We conclude that the formal defects described above constitute flagrant violations of Rule 38.1. Accordingly, we ORDER appellant's brief stricken and ORDER appellant to file an amended brief in this court on or before September 19, 2014.

The amended brief must correct the violations listed above and fully comply with the applicable rules. See, e.g., *id.* R. 9.4, 9.5, 38.1. If the amended brief does not comply with this order, we "may strike the brief, prohibit [appellant] from filing another, and proceed as if [appellant] had failed to file a brief." See *id.* R. 38.9(a); see also *id.* R. 38.8(a) (authorizing this court to dismiss appeal if appellant fails to timely file brief).

We recognize that appellant represents herself on appeal, i.e., is acting *pro se*. However, the law is clear that *pro se* litigants are held to the same standards as licensed attorneys and must comply with all applicable rules of procedure, including the rules governing appellate briefs. *Valadez v. Avitia*, 238 S.W.3d 843, 845 (Tex. App.—El Paso 2007, no pet.).

A pro se litigant is required to properly present her case on appeal just as she is required to properly present her case to the trial court. Id. Accordingly, we will not apply different standards merely because an appeal is brought by a litigant acting without advice of counsel. Id. If appellant timely files a brief that complies with this order, appellee's brief will be due thirty days after appellant's brief is filed.

See TEX. R. APP. P. 38.6(b). _____ Marialyn Barnard, Justice
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on
this 9th day of September, 2014. _____ Keith E. Hottle Clerk
of Court