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# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

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**Thomas Jefferson May**

v.

**Terri Anita May**

**Appeal from Tuscaloosa Circuit Court  
(DR-17-900276)**

PER CURIAM.

Thomas Jefferson May ("the husband") appeals from a judgment of the Tuscaloosa Circuit Court ("the trial court") divorcing him from Terri Anita May ("the wife"). Both parties are represented by counsel on appeal.

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For reasons to be discussed, a rendition of the facts and a presentation of the procedural history of this case are unnecessary for our decision to affirm the trial court's judgment. Rule 28(a), Ala. R. App. P., sets forth what an appellant's brief "shall contain." The rule is not merely a suggestion as to what one might wish to include in a brief. Rule 28(a) mandates that an appellant include certain specific information necessary for this court to conduct a meaningful review of the matter before us.

Rule 28(a)(3) requires appellants in civil cases to include

"[a] statement of jurisdiction, including (I) the basis for the jurisdiction of the court to which the appeal is taken (with citations to the applicable statutory provisions and stating relevant facts establishing jurisdiction), and (ii) the filing dates establishing the timeliness of the appeal."

The "Statement of Jurisdiction" included in the husband's appellate brief states that this is an appeal from a divorce judgment, and it includes the date the divorce judgment was entered and the date the notice of appeal was filed, as required by Rule 28(a)(3)(ii). However, the statement goes on to say that the appeal is properly before this court "because the case is a personal injury/slip-n-fall negligence case,

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filed, and appealed within the allowable times of all statutes controlling." Clearly, that statement does not indicate the basis for this court's jurisdiction over this matter.

Rule 28(a)(5) requires the appellant to set forth a statement of the case. That subdivision of the rule provides, in pertinent part, that the appellant's brief shall contain

"[a] statement of the case, indicating briefly the nature of the case, the course of proceedings, and the disposition in the court below, with appropriate references to the record (see subdivision (g)). In civil cases, a statement of the case should also identify the adverse ruling or rulings from which the appeal is taken and asserted as error on appeal, with a reference to the pages of the record on appeal at which the adverse ruling or rulings can be found."

The entire "Statement of the Case" in the husband's brief reads:

"On or about December 02, 2004 Plaintiff and Defendant were married. This marriage was tumultuous at best and did not produce any children. [Ex. 2 - Divorce Complaint, Appeal Record pgs. 5-7].

"On June 02, 2017, Plaintiff filed for divorce a second time in the marriage, after stopping it 2 years earlier. [Ex. 3 - Trial Transcript pg,[sic] 6]."

In addition to omitting a description of the course of the proceedings and a reference to the judgment from which he

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appeals, the husband leaves this court to determine who in this action was the plaintiff and who was the defendant.

Rule 28(a)(7) requires the appellant to provide this court with a statement of the facts relevant to the issues he or she raises on appeal. Specifically, that rule provides that the appellant's brief shall contain

"[a] full statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (g)), except that no statement of the facts need be included in a brief in a case in which a writ of certiorari has issued and briefing has been ordered. Facts must be stated accurately and completely."

The "Statement of the Facts" presented in the husband's brief reads, in its entirety: "On or about December 02, 2004 Plaintiff and Defendant were married. The marriage became mentally abusive to Appellant and a divorce was filed." The inadequacy of the statement of the facts is evident.

Rule 28(a)(8) requires the appellant to include in his or her brief "a concise statement of the standard of review applicable to each issue." As his statement of the standard of review, which, we note, contains the only authority mentioned in the brief, the husband quotes a portion of Rule 4(a)(1), Ala. R. App. P., saying:

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"[I]n all cases in which an appeal is permitted by law as of right to the supreme court or to a court of appeals, the notice of appeal required by Rule 3[, Ala. R. Civ. P.,] [sic] shall be filed with the clerk of the trial court within 42 days (6 weeks) of the date of the entry of the judgment or order appealed from, or within the time allowed by an extension pursuant to Rule 77(d), Alabama Rules of Civil Procedure.'"

Rule 4(a)(1) involves when an appeal can be taken as of right and has nothing to do with standards of review.

The husband raises three issues on appeal, including (1) whether the trial court abused its discretion in awarding alimony to the wife "after a tumultous [sic] marriage," (2) whether the trial court abused its discretion in awarding property to the wife "after a tumultous [sic] marriage," and (3) whether the trial court abused its discretion in awarding the marital residence to the wife "after a tumultous [sic] marriage."

Rule 28(a)(9) requires the appellant to include "[a] summary of the argument, suitably paragraphed, which should be a clear, accurate, and succinct condensation of the argument actually made in the body of the brief. It should not merely repeat the headings under which the argument is arranged." In his brief, the husband merely paraphrases the statement of the

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issues presented. The summary is not in paragraph form and, in fact, is nothing more than the headings under which the arguments are arranged.

The heart of any appellate brief is the argument, the requirements of which are governed by Rule 28(a)(10). It is well settled that this court will not consider issues for which no legal arguments are developed and for which no authority is offered to support the appellant's contentions.

"Rule 28(a)(10)[, Ala. R. App. P.,] requires that arguments in briefs contain discussions of facts and relevant legal authorities that support the party's position. If they do not, the arguments are waived. Moore v. Prudential Residential Servs. Ltd. P'ship, 849 So. 2d 914, 923 (Ala. 2002); Arrington v. Mathis, 929 So. 2d 468, 470 n. 2 (Ala. Civ. App. 2005); Hamm v. State, 913 So. 2d 460, 486 (Ala. Crim. App. 2002). 'This is so, because "'it is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument.'" Jimmy Day Plumbing & Heating, Inc. v. Smith, 964 So. 2d 1, 9 (Ala. 2007) (quoting Butler v. Town of Argo, 871 So. 2d 1, 20 (Ala. 2003), quoting in turn Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994))."

White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008).

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Each of the arguments supporting the issues the husband presented for our review is one paragraph in length. No citations to authority are contained in any of the arguments.

The husband also fails to develop a legal argument for any of the issues raised in his brief. The longest "argument" presented concerns the husband's contention that the trial court abused its discretion in awarding the wife the marital residence. After explaining that he had maintained steady employment and had "received no help at home," the husband states:

"Appellant, being a Gulf Wart [sic] Veteran, likened the marriage to living in a nightmare and enjoyed better days at war than at home with the Appellee, where she would often turn music up late at night in her room to keep Appellant up, even though she knew he had to go to work the next morning and provide financially for the family. [Record citation omitted.] Continuing on with the nightmare, Appellant finally had to endure the cords of his television cable being cut and was without television."

No elaboration is needed to demonstrate the insufficiency of the argument.

This court is generally forgiving of minor mistakes or misstatements of law or fact. However, in this case, the husband's brief does not come close to meeting the

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requirements of Rule 28(a). "We remind counsel for the appellant that the sole purpose of appellate briefs 'is to present to this court the legal issues and arguments involved in the appeal.' Brannon v. Brannon, 477 So. 2d 445, 448 (Ala. Civ. App. 1985)." Fox v. Murrell, 622 So. 2d 386, 387-88 (Ala. Civ. App. 1993). To find error in this case, this court would have to search the record for relevant facts, compile those facts, and then perform the legal research required to determine whether the record demonstrated whether reversible error or an abuse of discretion existed. In short, the husband's brief on appeal is unacceptable, and this court will not perform the work the husband's attorney failed to do in preparing the brief.

The husband has failed to comply with Rule 28(a), Ala. R. App. P., and he has failed to demonstrate a reason for reversing the trial court's judgment. Accordingly, the judgment is affirmed.

Finally, the wife's attorney has asserted that the husband's appeal is frivolous and has requested an attorney fee on appeal in the amount of \$2,500. The wife's request is made pursuant to Rule 38, Ala. R. App. P., which provides



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that, in civil cases, if an appeal is frivolous, this court is authorized to award damages and single or double costs to the appellee. The grant or denial of damages pursuant to Rule 38 is within the sound discretion of the appellate court. City of Birmingham v. Wright, 379 So. 2d 1264 (Ala. 1980). We conclude that the husband's appeal as it was submitted to this court is frivolous because it presented the wife and this court with no legal argument for reversal. Accordingly, we award the wife \$1,500. That award is to be paid by the husband's attorney and is not to be charged to the husband. See Johnson v. Ives, 224 So. 3d 603 (Ala. Civ. App. 2016) (requiring damages awarded pursuant to Rule 38 to be paid by client's attorney).

AFFIRMED.

All the judges concur.