



In the Missouri Court of Appeals Eastern District

DIVISION FOUR

IN THE ESTATE OF: JOHN FINGAL
ALLEN, III a/k/a JACK F. ALLEN.

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No. ED108484

Appeal from the Circuit Court
of St. Louis County

Honorable Ellen S. Levy

FILED: December 22, 2020

Yvonne Allen (“Appellant”) appeals three probate orders relating to the administration of the estate of John Fingal Allen, III. Because Appellant’s failure to comply with the appellate briefing requirements of Rule 84.04 preserves nothing for our review, we dismiss the appeal.¹

Discussion

“Rule 84.04 sets forth mandatory rules for appellate briefing.” *Wong v. Wong*, 391 S.W.3d 917, 918 (Mo. App. E.D. 2013). Compliance with those rules is necessary “to ensure that appellate courts do not become advocates by inferring facts and arguments that the appellant failed to assert.” *City of Perryville v. Brewer*, 376 S.W.3d 691, 693 (Mo. App. E.D. 2012). We prefer to decide cases on the merits when possible and may exercise our discretion to review an appeal *ex gratia* when an appellant’s failure to comply with Rule 84.04 does not substantially prevent meaningful

¹ All rule references are to Mo. R. Civ. P. (2019).

review. *McGuire v. Edwards*, 571 S.W.3d 661, 667-68 (Mo. App. E.D. 2019). But “if the brief is so deficient that we cannot competently rule on the merits without first reconstructing the facts and supplementing the appellant’s legal arguments, then nothing is preserved for review and we must dismiss the appeal.” *Unifund CCR Partners v. Myers*, 563 S.W.3d 740, 743 (Mo. App. E.D. 2018).

Appellant’s third amended brief fails to comply with Rule 84.04 in several respects, and we cannot reach the merits of this appeal without acting as her advocate by searching the record for the relevant facts of the case and developing a legal argument on her behalf. *See Porter v. Santander Consumer USA, Inc.*, 590 S.W.3d 356, 357-58 (Mo. App. E.D. 2019).

First, Appellant’s statement of facts fails to comply with Rule 84.04(c), which requires a brief to include “a fair and concise statement of the facts relevant to the questions presented for determination without argument” and requires “specific page references to the relevant portion of the record on appeal.” “The primary purpose of the statement of facts is to afford an immediate, accurate, complete and unbiased understanding of the facts of the case.” *Kent v. Charlie Chicken, II, Inc.*, 972 S.W.2d 513, 515 (Mo. App. E.D. 1998). Appellant’s statement of facts is deficient because it contains inadequate references to the record to support its assertions and omits relevant facts necessary to support Appellant’s claims on appeal. There are no references to the transcripts anywhere in the statement of facts, and seven factual assertions have no references to the record at all. The statement of facts also fails to support the allegations in Appellant’s points relied on. For example, Appellant’s second point relied on alleges the probate court failed “to take into account [Appellant’s] powers and her duties as an independent personal representative . . . thereby changing estate expenses into personal expenses.” Although the statement of facts lists numerous expenses, it does not include any facts to support Appellant’s claim of error. Failure to include

“the facts upon which an appellant’s claim of error is based fails to preserve the contention for appellate review.” *Id.*

Second, Appellant’s brief fails to comply with Rule 84.04(d), which requires a point relied on to: (1) identify the ruling or action being challenged; (2) concisely state the legal reasons for the claim of reversible error; and (3) explain why, in the context of the case, those legal reasons support the claim of reversible error. “Given that a template is specifically provided for in Rule 84.04(d)(1), appellants simply have no excuse for failing to submit adequate points relied on.” *Scott v. King*, 510 S.W.3d 887, 892 (Mo. App. E.D. 2017). Appellant’s points relied on fail to explain why the legal reasons for her claims of reversible error support her claims. For example, Appellant’s third point asserts the probate court “erred in denying the motion for reconsideration of income because the decision was based on bias, ex parte and fraudulent (sic) memo to the court and was against the weight of evidence, resulting in the loss of income under the will of [the decedent].” This point fails to explain how the probate court’s ruling was against the weight of the evidence and is multifarious in that it also asserts the ruling was erroneous because it “was based on bias.” Multifarious points relied on violate Rule 84.04(d) and preserve nothing for review. *Librach v. Librach*, 575 S.W.3d 300, 307 (Mo. App. E.D. 2019).

Finally, and most importantly, the argument section of Appellant’s brief is deficient. Rule 84.04(e), requires the argument to “include a concise statement describing whether the error was preserved for appellate review; if so, how it was preserved; and the applicable standard of review.” “To develop a point relied on, the argument section of an appellate brief ‘should show how the principles of law and the facts of the case interact.’” *Campbell v. Woodland Lakes Trusteeship, Inc.*, 591 S.W.3d 511, 513 (Mo. App. E.D. 2019) (quoting *Kim v. Kim*, 431 S.W.3d 524, 526 (Mo. App. W.D. 2014)). “When an appellant fails to support a point with relevant legal authority or

argument beyond conclusory statements, the point is deemed abandoned.” *Smith v. Med Plus Healthcare*, 401 S.W.3d 573, 576 (Mo. App. E.D. 2013). Rule 84.04(e) also provides that “[a]ll factual assertions in the argument shall have specific page references to the relevant portion of the record on appeal.”

Appellant’s brief does not explain how any of the claims of error were preserved for appellate review. With one exception, the argument section fails to identify the applicable standard of review, which “is essential to all appellate arguments, as it outlines this court’s role in disposing of the matter before it.” *Porter*, 590 S.W.3d at 358. “While it would be easy enough for this court to determine the applicable standard of review, it is not our duty to supplement the deficient brief with our own research.” *Waller v. Shippey*, 251 S.W.3d 403, 406 (Mo. App. W.D. 2008). Appellant’s brief also fails to sufficiently develop a legal argument supporting her claims on appeal and, to the extent it cites legal authority, provides an inadequate explanation as to how that authority applies to this case. “Mere conclusions and the failure to develop an argument with support from legal authority preserve nothing for review.” *Porter*, 590 S.W.3d at 358 (quoting *Wallace v. Frazier*, 546 S.W.3d 624, 628 (Mo. App. W.D. 2018)). Further, numerous factual assertions in Appellant’s argument are unsupported by references to the record.

In sum, to determine whether Appellant is entitled to relief, we would have to comb the record for support for her factual assertions, decipher her points on appeal, and develop a legal argument supporting her claims. *See Wong*, 391 S.W.3d at 919. This would require us to act as Appellant’s advocate, which we cannot do. *Id.*

Conclusion

Appellant's failure to comply with Rule 84.04 precludes our ability to address the merits of her claims and preserves nothing for our review. The appeal is dismissed and all pending motions are denied as moot.

A handwritten signature in blue ink, appearing to read "M. Gardner", is positioned above a horizontal line.

MICHAEL E. GARDNER, Judge

Gary M. Gaertner, Jr., P.J., concurs.
Philip M. Hess, J., concurs.