



**In the
Missouri Court of Appeals
Western District**

KEITH E. WALKER,

Appellant,

v.

ANNE PRECYTHE, ET AL.,

Respondents.

WD84121

OPINION FILED:

OCTOBER 19, 2021

**Appeal from the Circuit Court of Cole County, Missouri
The Honorable Daniel R. Green, Judge**

**Before Division One: Alok Ahuja, Presiding Judge, Lisa White Hardwick, Judge,
Anthony Rex Gabbert, Judge**

Keith Walker appeals the judgment of the Cole County Circuit Court dismissing his petition for failure to state a claim. His petition was captioned a “Whistle Blower Complaint” and alleged violations of law by the Missouri Department of Corrections where he was incarcerated. He raises eight points on appeal. The appeal is dismissed.

Facts

Keith Walker filed a “Whistle Blower Complaint” in October 2019. It alleged five causes of action under both Missouri state law and federal law. Walker was permitted in December 2019 to add a sixth and seventh cause of action.

At the time the petition was filed, Walker was incarcerated in the Missouri Department of Corrections (“MDOC”) at the Western Missouri Correctional Center. He claimed MDOC was appropriated funds to provide winter clothing and medicine and that the MDOC refused to provide such clothing and medicine. He stated this was a misappropriation of funds. Walker argued that walking outside without protective clothing caused pain to his exposed skin as well as illness such as coughs and colds. The petition further alleged that MDOC attempted to sell him winter clothing at an increased rate and that MDOC provided winter clothing to other similarly situated prisoners but not to him. Walker also argued that the MDOC failed to give him an informal resolution form so he was unable to start the grievance process within the MDOC. He claimed these actions were affirmative misconduct.

Walker’s petition named Anne Precythe, the Director of the MDOC, and Sherie Korneman, the Warden of the Western Missouri Correctional Center, as defendants in their individual capacities. They each filed a motion to dismiss in September 2020. The court dismissed Walker’s petition with prejudice for failure to state a claim. This appeal follows.

Analysis

“Although [Walker] appears *pro se*, he is subject to the same procedural rules as parties represented by counsel, including the rules specifying the required contents of appellate briefs.” *Bey v. Precythe*, 611 S.W.3d 599, 602 n.3 (Mo. App. W.D. 2020) (internal quotation marks omitted). “Rule 84.04 specifies the required contents of a brief on appeal.” *Id.* at 602. “Compliance with Rule 84.04 briefing requirements is mandatory in order to ensure that appellate courts do not become advocates by speculating on facts and on arguments that have not been made.” *Id.* (internal quotation marks omitted). “An appellant’s failure to substantially comply with Rule 84.04 preserves nothing for our review and constitutes grounds for dismissal of the

appeal.” *Id.* (internal quotation marks omitted). “This is especially true where, as here, we cannot competently rule on the merits of [Walker’s] argument without first reconstructing the facts ... and then refining and supplementing [his] points and legal argument.” *Id.* (internal quotation marks omitted).

Walker’s petition named the director of the MDOC and the warden of the Western Missouri Correctional Center as defendants in their individual capacities. One of the grounds for dismissal identified in the motion to dismiss is that the defendants were protected by official immunity. In his brief with this court, Walker claims the dismissal of his petition on the basis of official immunity was error with this point relied on:

Judge Green’s dismissal of the “whistle blower” complaint with prejudice based on the defense of official immunity and no personal knowledge, is court error, an abuse of discretion, a denial of Appellant’s due process rights and a fair unprejudicial adjudication, U.S. Const. XIV; MO Const., Art I Sections 10 when the Missouri Attorney General enter a defense under oath claiming [official immunity] protection for Respondent’s discretionary acts alleged in the “whistle blower” complaint indicating their discretionary acts affected public safety and public welfare and [no personal knowledge] of their discretionary acts alleged in the “whistle blower” complaint which affected public safety and public welfare.

Appellant was prejudiced, because Judge Green’s actions deprived Appellant of due process, a fair unprejudicial adjudication denying appellant vindication of severed 1st, 8th and 14th amend Equal Protection rights as discussed herein.

(Errors, quotation marks, and brackets in original). This point does not contain the information required by Rule 84.04(d)(1) or substantially follow the form prescribed by the rule. *See id.* at 603. Where an appellate court is asked to review the decision of a trial court, points relied on “shall (A) [i]dentify the trial court ruling or action that the appellant challenges; (B) [s]tate concisely the legal reasons for the appellant's claim of reversible error; and (C) [e]xplain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error.” *Id.* (quoting Rule 84.04(d)(1)). Each point relied on “shall be in substantially the following

form: ‘The trial court erred in [*identify the challenged ruling or action*], because [*state the legal reasons for the claim of reversible error*], in that [*explain why the legal reasons, in the context of the case, support the claim of reversible error*].’” *Id.* (emphasis in original) (quoting Rule 84.04(d)(1)). “Abstract statements of law, standing alone, do not comply with this rule.” *Id.* (quoting Rule 84.04(d)(4)).

Although Walker’s point identifies a ruling challenged, the dismissal of his petition, it does not cite the legal standard for when a petition states a cause of action or when official immunity is waived or explain how that standard supports his claim of reversible error. “The purpose of the points relied on is to give notice to the opposing party of the precise matters which must be contended with and to inform the court of the issues presented for review.” *Id.* at 604 (internal quotation marks omitted).

Deficient points relied on force the appellate court to search the argument portion of the brief or the record itself to determine and clarify the appellant’s assertions, thereby wasting judicial resources, and, worse yet, creating the danger that the appellate court will interpret the appellant’s contention differently than the appellant intended or his opponent understood.

Id. (internal quotation marks omitted). “Thus, to address [Walker’s] alleged errors we would have to search the argument section of his brief and the record to refin[e] and supplement[] [his] points.”

Id. (internal quotation marks omitted). “It is improper for us to speculate as to the point being raised by the appellant and the supporting legal justification and circumstances.” *Id.* (internal quotation marks omitted).

Walker’s next seven points relied on suffer from the same deficiencies. Each point is focused on one of the seven counts in his petition and states that he should prevail on that count in his cause of action. The points are not focused on why his petition states a cause in action. Instead,

Walker asks this court to find in his favor for each count and to award him a monetary judgment or remand back to the trial court.

The deficiencies in Walker's brief are further illustrated by his argument section. With respect to whether the defendants are protected by official immunity, Walker's sole argument is as follows:

Respondents' conspired misappropriation of public funds, to include the conspired accompanying causes of actions, are illegal and goes beyond ordinary negligence and is admitted when the AG seeks official immunity for the performance of discretionary acts.

The AG, by claiming official immunity, confirm under oath Respondent's (1) receiving in disbursed public funds to provide for basic winter clothing and medication to prisoners but, failing to do so, (2) issuance of winter stocking hats, winter gloves, thermal underwear and cough suppressants to some MODOC prisoners at certain facilities but, selling those items to similarly situated prisoners at other facilities, (3) refusing grievance forms intended to highlight the misappropriation, (4) colluding, developing the scheme to deny winter gear and cough suppressants forcing prisoners to buy from the canteen or do so without were all known bad faith acts exercised in the performance of their duties.

The AG's misrepresentation under oath suggest that Respondent's bad faith actions should be permitted as acceptable Judgment acts affecting public safety and public welfare. That, would be asking for a continued judicial collusionary effort by this court. Public safety and public welfare considerations conflicts with misappropriating public funds causing double dipping scenarios from the public.

The AG's misrepresentation under oath suggests Respondents has no personal knowledge of the "discretionary" acts committed during the course of their official duties in the interest of public safety and public welfare qualifying them for official immunity, a immunity which legally expresses personal knowledge.

(Errors in original). Walker's brief contains the following "Conclusion" section with respect to official immunity:

The AG's motion to dismiss claiming (1) official immunity for discretionary acts. (2) No personal knowledge of those "discretionary" acts is a known intentional misrepresentation and mockery of the law tainting the legal communities and law journals with a legal conflict.

Judge Green's acceptance of the legal conflict without clarifying is judicial misconduct solidified by dismissing the petition with prejudice attempting to prevent the misappropriation from being discovered.

It is prayed this appellant court adjudicated this matter in the ends of justice. In the alternative, remand.

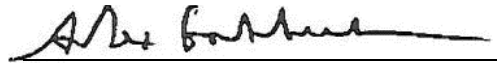
(Errors in original).

“[A]n argument must explain why, in the context of the case, the law supports the claim of reversible error.” *Pearson v. Keystone Temp. Assignment Group, Inc.*, 588 S.W.3d 546, 551 (Mo. App. E.D. 2019) (quoting Rule 84.04(e)). “The argument should develop the claim of error by showing how the relevant principles of law and the facts of the case interact.” *Id.* “Additionally, an appellant is obligated to cite appropriate and available precedent if he expects to prevail, and, if no authority is available to cite, he should explain the reason for the absence of citations.” *Id.* at 551-52. “Our court will not speculate as to the parameters of [Walker’s] arguments on appeal because doing so would improperly cast the court in the role of his advocate.” *Porter v. Santander Consumer USA, Inc.*, 590 S.W.3d 356, 358 (Mo. App. E.D. 2019). “Mere conclusions and the failure to develop an argument with support from legal authority preserve nothing for review.” *Id.* (internal quotation marks omitted).

Walker’s argument with respect to official immunity is not focused on his petition and why it states a cause of action. The same is true for the other seven points in his brief. “While the preference is to decide an appeal on the merits, where[, as here,] a brief is so defective as to require the appellate court and opposing counsel to hypothesize about the appellant’s argument and precedential support for it, the merits cannot be reached.” *Bey*, 611 S.W.3d at 605 (internal quotation marks omitted). “To address the merits of this appeal, this court would have to become an advocate for [Walker] by searching the record for the relevant facts of the case, speculating about the possible claims of error, and crafting a legal argument on [his] behalf.” *Id.* (internal quotation marks omitted). “This we cannot do.” *Id.* (internal quotation marks omitted).

Conclusion

The appeal is dismissed.¹



Anthony Rex Gabbert, Judge

All concur.

¹ The Respondents filed a motion with this court to strike irrelevant accusations from Walker's brief. That motion was taken with the case. Given our dismissal for failure to comply with briefing requirements, the motion is denied.