Affirmed and Opinion filed April 19, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-00-01194-CV

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DOUGLAS M. O'KEEFE, Appellant

V.

KAREN E. PHELAN AND TIMOTHY J. PHELAN, INDIVIDUALLY AND D/B/A WALLER COUNTY LAND COMPANY, Appellees

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On Appeal from the 9th District Court
Waller County, Texas
Trial Court Cause No. 93-03-12,575

O P I N I O N

This is an appeal from a summary judgment in favor of appellees, Karen E. Phelan and Timothy J. Phelan, Individually and d/b/a Waller County Land Company. Douglas M. O'Keefe, appellant, brought suit against appellees seeking damages for alleged fraud and violations of the Texas Deceptive Trade Practices Act "(DTPA"). *See* TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (Vernon 1987 & Pamph. 2000). We affirm.

In 1992, appellant and appellees entered into a Farm and Ranch Earnest Money Contract for the conveyance of seven acres of real property in Waller County, Texas. Ultimately, the

appellees executed a warranty deed conveying the property to appellant for the sum of $20,500.00.

According to his petition, after appellant acquired the property and began construction for improvements, he discovered that a hazardous waste storage and recycling facility was under construction a mile and a half from the property. Appellant claimed he was unaware of the existence of the facility at the time of purchase and would not have purchased the property if he had known about a hazardous waste facility in such close proximity to it. Appellant claimed appellees knew or should have known about the facility and that they had a duty to disclose such knowledge. Appellant claimed to have been damaged in the amount of $104,000.00.

On March 4, 1993, appellant filed suit against appellees alleging fraud and violations of the DTPA. Apparently, no action was taken in the suit for some time. Then, on May 12, 2000, appellees filed a no evidence motion for summary judgment. *See* TEX. R. CIV. P. 166a(i). In addition, appellees requested sanctions pursuant to rule 13 of the Texas Rules of Civil Procedure. *See* TEX. R. CIV. P. 13 (providing for the imposition of sanctions for filing pleadings that are groundless and brought in bad faith or groundless and brought to harass).

On June 20, 2000, the trial court granted appellees' motion, ordering that appellant take nothing. In addition, the trial court granted appellees' request for sanctions pursuant to rule 13 and ordered appellant to pay $13,653.50 plus interest, costs, and attorneys fees. Appellant then perfected this appeal.

On January 16, 2001, this Court received appellant's brief. On January 17, 2001, we returned appellant's brief and asked that it be corrected because it did not comply with rules 9.4 or 38 of the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 9.4 (stating form requisites for documents filed in appellate courts); TEX. R. APP. P. 38 (stating substantive requisites for briefs filed in the appellate courts). Under rule 38.9, the court may require a brief to be redrawn for formal and/or substantive defects. TEX. R. APP. P. 38.9.

On January 26, 2001, we once again received appellant's brief; however, it was again

returned. We ultimately ordered the brief filed on February 1, 2001. On February 7, 2001, appellees filed a motion asking this Court to dismiss appellant's appeal for want of prosecution. Specifically, appellees complain that appellant has failed to substantially comply with rule 38, both formally and substantively. On March 1, 2001, we ordered the motion taken with the case.

We have reviewed appellant's brief and find that he raises one complaint: Discovery of *new evidence*, attached to his brief, that defeats appellees' motion for summary judgment. He raises no points of error, issues, or arguments relating to the evidence that was actually submitted in support of the motion for summary judgment. Appellant's argument is stated, *in toto*:

> Appellant understands that evidence is not to be sent with the brief but newly discovered documents once and for all prove appellant's case. This evidence is so strong that appellant knows that there is no document, witness nor any evidence that appellee [sic] can produce to revoke this evidence in any form or fashion. Since lower courts have not only dismissed appellant's case but also sanctioned him, appellant feels evidence that totally proves beyond any doubt that last Summary Judgement [sic] was without doubt, totally groundless, frivolous and without merit, should be reviewed by this court. I would certainly hope that the court is interested in the truth in this matter and it is as follows.
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> First new issue of fact was known by appellee [sic] for years and this document was given to former counsel to file yet he never did file the document, being that he lost it. It has taken time to replace it.
>
> Second new issue of fact was discovered by a friend of appellant on the computer Internet, so anyone with the Internet can obtain this. Appe;;ant [sic] doesn't own a computer, or he would have certainly found this.
>
> Third new issue of fact is only 2 months old and I was just now able to obtain this. Had any of these issues of fact been found earlier that certainly would have been sent with the appeal.
>
> Because of the enormous impact of the new issues of fact on appellant's case, I am respectfully praying to this court to at least review this evidence and act accordingly.

The remainder of the brief merely describes the "new evidence" and the appendix to the brief contains the documents described by appellant. Appellant asks the court to reverse the

trial court's order granting summary judgment in favor of appellees based solely on this new evidence.

It is elementary, with limited exceptions that are not material here, an appellate court may not consider matters outside the appellate record. *Siefkas v. Siefkas*, 902 S.W.2d 72, 74 (Tex. App.—El Paso 1995, no writ) (citing *Sabine Offshore Serv. v. City of Port Arthur*, 595 S.W.2d 840, 841 (Tex. 1979)). Documents not introduced into evidence at trial are not properly included in the record and cannot be considered on appeal. *Vanscot Concrete Co. v. Bailey*, 862 S.W.2d 781, 783 (Tex. App.—Fort Worth 1993), *aff'd*, 894 S.W.2d 757 (Tex. 1995). Specifically, on appeal from a summary judgment, we can only consider such matters as were presented to the trial court. *Crossley v. Staley*, 988 S.W.2d 791, 794 (Tex. App.—Amarillo 1999, no pet.). The attachment of documents as exhibits or appendices to briefs is not formal inclusion in the record on appeal and, thus, the documents cannot be considered. *Perry v. Kroger Stores, Store No. 119*, 741 S.W.2d 533, 534 (Tex. App.—Dallas 1987, no writ). Because the documents contained in the appendix to appellant's brief were not presented to the trial court as summary judgment proof, they are not included in the record and cannot be considered on appeal. *See Crossley*, 988 S.W.2d at 794. Because appellant's sole issue on appeal relies on matters outside the record, we must strike the issue and not consider it. *Id.*; *Siefkas*, 902 S.W.2d at 74.

In addition to relying solely on arguments based on evidence outside the appellate record, appellant has failed to cite any authority to support his contentions on appeal.[1] An issue or point of error not supported by authority is waived. *CherCo Properties, Inc. v. Law, Snakard & Gambill, P.C.*, 985 S.W.2d 262, 266-67 (Tex. App.—Fort Worth 1999, no pet.); *Melendez v. Exxon Corp.*, 998 S.W.2d 266, 280 (Tex. App.—Houston [14th Dist.] 1999, no

[1] Similarly, appellant's brief is totally devoid of any reference to the clerk's record. This Court has no duty to search the record without guidance from the appellant to determine whether an assertion of reversible error is valid. *Rendleman*, 909 S.W.2d at 59. The failure to cite to relevant portions of the trial court record waives appellate review. *Id.* We recognize, in this case, that appellant's reliance on evidence not contained in the record would limit citations to it. However, appellant does not even bother to provide this Court with citations to the trial court's order granting summary judgment or other documents that are contained in the record and are relevant to the appeal.

pet.); *Rendleman v. Clarke*, 909 S.W.2d 56, 59 (Tex. App.—Houston [14th Dist.] 1995, no writ) (citing *Trenholm v. Ratcliff*, 646 S.W.2d 927, 934 (Tex. 1983); *Hunter v. NCNB Texas Nat'l Bank*, 857 S.W.2d 722, 725 (Tex. App.—Houston [14th Dist.] 1993, writ denied)). We recognize that the Texas Supreme Court has disapproved of appellate courts affirming a trial court judgment based on briefing irregularities. *See Inpetco, Inc. v. Texas American Bank/Houston N.A.*, 729 S.W.2d 300, 300 (Tex. 1987). That holding, however, was limited to those instances where the court of appeals did not give the appellant an opportunity to correct or amend the defects or irregularities. *Id*. In this case, appellant was twice given the opportunity to correct the deficiencies in his brief, and failed to do so. We cannot see how a third opportunity would yield a different result. Accordingly, we find appellant has waived his sole issue on appeal by failing to adequately brief the issue.

Finally, in the conclusion of his brief, appellant suggests that, in the interest of truth and justice, this Court ignore his inability to comply with the rules and procedures because he is "no lawyer." We disagree. The courts of this State have long-recognized that no basis exists for differentiating between litigants represented by counsel and litigants appearing *pro se* in determining whether the rules of procedure must be followed. *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184 (Tex. 1978); *Scoville v. Shaffer*, 9 S.W.2d 201, 204 (Tex. App.—San Antonio 1999, no pet.) There cannot be two sets of procedural rules, one for litigants with counsel and another for litigants representing themselves. *Cohn*, 573 S.W.2d at 184-85. Litigants who represent themselves must comply with the applicable law and procedural rules, or they would be given an unfair advantage over litigants represented by counsel. *Id.* As the Supreme Court stated in a criminal case:

> The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with the relevant rules or procedural and substantive law.

Faretta v. California, 422 U.S. 806, 835 n. 46, 95 S.Ct. 2525, 2541, 45 L.Ed.2d 562 (1975).

Based on appellant's reliance on evidence outside the appellate record and his failure to

provide citation to authority or the record, we affirm the trial court's judgment. Our disposition of appellant's sole complaint renders moot appellees' motion to dismiss the appeal for want of prosecution.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed April 19, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).