IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICAL CIRCUIT
FOR THE STATE OF FLORIDA
Civil Appeal

OLIVIA LEDUC,
Appellant,

vs.

Appeal number.: 23-CA-16396
Division: K
L.T. Case No.: 22-TR-086279

STATE OF FLORIDA,
Appellee.
_____/

ORDER ON MOTION FOR RECONSIDERATION

THIS CASE is before the Court on Appellant's March 7, 2024 Motion for Reconsideration (Doc. 15) of this Court's February 15, 2024 Dismissal (Doc. 14).

Because the dismissal to which Appellant's Motion (Doc. 15) is directed is a final order, reconsideration is not the correct procedure for review of the order. Being an appellate rather than civil trial proceeding, the rules of *appellate* procedure apply. The Court will treat the Motion as one for rehearing. Rule 9.330, Fla. R. App. P. The Motion (Doc. 15), filed 20 days after the issuance of the dismissal, is untimely. Rule 9.330(a)(1), Fla. R. App. P. Appellant did not seek an extension of time or leave of court to file the Motion.

Notwithstanding the untimeliness, the Court has reviewed the Motion, and, in turn, the history of this case in depth. The Court previously struck Appellant's first brief because it failed to contain citations to the record (Docs. 9, 10). The Court then struck the second brief Appellant filed for the same deficiencies. (Doc 13). Appellant explained in the second brief (Doc. 13) that no record of the trial exists because "the civil trial wasn't recorded," and "this brief is unable to make references to the specific record of proceedings since none exist…Appellant respectfully suggests that the Court should benefit from hearing counsel explain how the trial court's findings are not supported by the evidence or the lack thereof. Clearly, any testimony is lost in the cold record, and some further elucidation beyond that contained in the written brief would benefit the Court in these proceedings. The Appellant seeks a reversal of the trial court based upon the application of the undisputed facts in this case to the law in addition to other legal errors committed by the trial court, and it is in understanding the nuances in the facts of this matter as applied to the law where oral arguments would benefit." (Doc. 13, p. 7)

It is axiomatic that it is the petitioner or appellant's burden to ensure that the record is prepared and transmitted in accordance with the rules. Rule 9.200(e), Fla. R. App. P. In the absence of a record, a court is constrained to affirm the trial court's decision.[1] *Applegate v. Barnett Bank of Tallahassee,* 377 So. 3d 1150, 1152 (Fla. 1979).

[1] The dismissal had the effect of affirming the trial court's decision.

The record shows that the appeal was filed September 5, 2023. On November 3, 2023,[2] Appellant filed directions to the clerk which included designations for a transcript of the unrecorded proceeding to an unnamed court reporter. After the Court struck the first brief, Appellant then filed a motion for extension of time to file an amended brief on December 20, 2023 (Doc. 11). In the motion for extension of time (Doc. 11), Appellant cited difficulties, mostly financial, in obtaining the record of the trial. It also stated that the "record should not be extensive," and that once the record was received, "it will take little time…" for the initial brief to be completed (Doc. 11, p. 3). Before the Court ruled on the pending motion for extension of time, Appellant filed the second brief stating there are no citations to the record because "none exist." (Doc. 13, p. 7).

Appellant now requests in the Motion that the Court allow Appellant to recreate a record in the absence of a transcript (Doc. 15, para. 13), pursuant to 9.200(b)(5) Fla. R. App. P. Therein, arguing that the trial court should have "shared such knowledge" before the brief was stricken,[3] and suggests that the Court should have *sua sponte* entered an order relinquishing jurisdiction to enable Appellant to pursue the development of a statement of the evidence.[4] (Doc. 15, p. 3-4).

Rule 9.200(e), Fla. R. App. P. states that a party may enforce the provisions of the rule by *motion*. The Court must order supplementation of the record only if it finds it is incomplete. 9.200(f), Fla. R. App. P. Appellant here not only never filed such a motion to enforce this rule prior to the Court's dismissal (Doc. 14), but Appellant also repeatedly stated that there was no record. Further, the first instance of Appellant referencing the procedure outlined in 9.200(b)(5) was in Appellant's Motion for Reconsideration (Doc. 15), which is being treated as one for rehearing. Rehearings are intended to correct or address matters *the court* may have overlooked.

Because, the Motion is untimely, pursuant to 9.330 Fla. R. App. P., does not address matters the Court overlooked, and no motion was filed pursuant to 9.200(e), Fla. R. App. P., it is **ORDERED** that Appellant's Motion for Reconsideration (Doc. 15) is **DENIED**.

ORDERED on the date imprinted with the Judge's signature.

23-CA-016396 6/18/2024 10:51:30 AM

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Lindsay M. Alvarez, Circuit Judge

Copies furnished to:

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[2] Directions to the clerk, if filed, are due within 10 days after filing the notice of appeal. Rule 9.200(a)(2), Fla. R. App P.

[3] It is not clear whether "such knowledge" that Appellant is referring to is the 9.200(b)(5) procedure or the fact that the proceeding had not been recorded or that the proceeding was a civil one requiring counsel to make arrangements for a court reporter. (Doc. 15, para 16). The trial court cannot be expected to know the appellate briefing schedule, nor can it be expected to make such revelations in conjunction with it.

[4] Under Rule 9.200(b)(5), an order of the appellate court is not required unless a record must be *supplemented* with a statement of the evidence. The procedure under 9.200(b)(5) is optional and rarely sought. Leave to supplement a record will be ordered upon filing of a motion. An order to supplement the record will be initiated by the court only if it is aware that the record is incomplete and can be supplemented. Here, the Appellant said repeatedly that there was no record.

Alex Stavrou
Patrick Leduc
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Additional copies provided through JAWS

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ORDER DISMISSING APPEAL

On December 14, 2023 the Court entered an order striking Appellant's initial brief (Doc. #10) because, among other errors, Appellant's brief (Doc. #9) failed to include any references to the record in its statement of the case and facts as required by Florida Rules of Appellate Procedure Rule 9.210(b)(3). This order (Doc. #10) further directed Appellant to submit a corrected initial brief in compliance with the rules. Appellant was forewarned in this order (Doc. #10) that failure to file and serve a brief that complies with the rules would result in dismissal of the appeal without further opportunity to be heard.

Despite this court's explicit order to include citations in the initial brief's statement of the case and facts, Appellant's amended initial brief (Doc. #13) again fails to include any references to the record in its statement of the case and facts. Although Appellant excused this second lapse with the statement that no record of the trial exists,[1] this statement is belied by the fact that the record on appeal appears on the appellate docket. (Doc. #4).[2] An appellate record consists of more than a transcript.

It is therefore

ORDERED that the appeal is DISMISSED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature. It is further ORDERED that all pending motions in this appeal are DENIED as moot.

23-CA-016396 2/15/2024 1:30:48 PM
Lindsay Alvarez
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Lindsay M. Alvarez, Circuit Judge

[1] Doc. #13, p.7
[2] Notably, Appellant filed Directions to the Clerk for items to include in the Record on Appeal (Doc. #4, p. 38-39).

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