

NOT DESIGNATED FOR PUBLICATION

No. 126,009

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

MANHATTAN HOUSING AUTHORITY,
Appellee,

v.

PAULA K. GOLDWYN,
Appellant.

MEMORANDUM OPINION

Appeal from Riley District Court; JAMES R. KEPPLER, judge. Submitted without oral argument. Opinion filed December 15, 2023. Affirmed.

Paula K. Goldwyn, appellant pro se.

David P. Troup, of Weary Davis, L.C., of Junction City, for appellee.

Before ISHERWOOD, P.J., GREEN, and PICKERING, JJ.

PER CURIAM: Paula K. Goldwyn resided in an apartment without a lease after the former tenant, who was also Goldwyn's friend, vacated the residence. Goldwyn was ultimately evicted, and it is the propriety of that eviction proceeding that she brings to us for review. She raises a number of issues but fails to adequately brief all but one of those points. Claims that are raised merely incidentally rather than accompanied by a substantive analysis are considered waived or abandoned. Accordingly, we affirm the district court's judgment and grant the Manhattan Housing Authority's request for attorney fees.

FACTUAL AND PROCEDURAL BACKGROUND

Manhattan Housing Authority (MHA) owns and manages property in Riley County, including the apartment at the center of this case. Leon "Lee" Sanders was the most recent tenant, and sole lessee, of that apartment, but a medical emergency forced him into a nursing home. Paula Goldwyn, a friend of Sanders', remained in the apartment, during which time Sanders continued to pay the rent for a period of time.

A few months after Sanders' departure from the residence, the district court formally appointed someone to serve as a guardian and conservator for him. That individual then removed Sanders' belongings from the apartment and notified MHA that Sanders intended to vacate the apartment. Once Sanders officially vacated, MHA served Goldwyn with a notice to quit and vacate the premises within three days. Goldwyn refused to do so which prompted MHA to file an eviction petition. Goldwyn responded and denied the claims set out in that petition.

The district court addressed the matter during a bench trial at which MHA appeared in-person via counsel. Goldwyn appeared pro se, via zoom, due to an illness and requested a continuance. The district court declined to grant Goldwyn's request because she failed to post the bond required under K.S.A. 2022 Supp. 61-3807(b), which governs continuances in eviction cases.

The case got underway with testimony from Jeremy Meek, the public housing manager for MHA. Meek testified simply that MHA owns the apartment, Sanders was the most recent tenant and had vacated the apartment, but Goldwyn remained in the residence without a lease. MHA also introduced two documents in support of its petition: (1) Sanders' notice of intent to vacate as Plaintiff's Exhibit A, and (2) the notice to quit and vacate served on Goldwyn as Plaintiff's Exhibit B. Goldwyn objected to MHA's introduction of Exhibit A on the grounds that the drafter, Sanders' conservator, was not

present to verify its authenticity. The district court overruled Goldwyn's objection and took judicial notice of Sanders' conservatorship case.

Goldwyn sought to support her case solely through her own testimony. She explained to the court that while she has her own home, Sanders is her best friend, so she simply remained in the apartment to preserve it for him until he was released from the nursing home. According to Goldwyn, Sanders intended to obtain a reversal of the conservatorship order, which would enable him to return to his apartment where Goldwyn could fill the role of his live-in aide. She acknowledged that MHA notified Sanders that Goldwyn's occupancy of the apartment violated his lease but explained that Sanders requested a private conference to resolve the matter, a measure provided for in the notice MHA issued, but his request was denied. Goldwyn also informed the court that she would like to pursue a counterclaim against whoever retrieved Sanders' belongings because they burst in twice without notice and some of her personal items were swept up in their collection of Sanders' things.

The district court found that Goldwyn was essentially attempting to assert the right of a prior tenant in the absence of any leasehold, legal, or equitable interest which afforded her the right to remain in the apartment. It awarded possession of the residence to MHA along with a writ of restitution, court costs, and a right to any future hearing to address additional damages.

Goldwyn now brings the case to us with a request to review various concerns she has regarding the nature of the eviction proceeding.

LEGAL ANALYSIS

Goldwyn represents herself for this appeal, as she did during the hearing before the district court. Pro se litigants proceed at their own peril and are held to the same

procedural rules as parties represented by counsel. *Mangiaracina v. Gutierrez*, 11 Kan. App. 2d 594, 595-96, 730 P.2d 1109 (1986). In that vein, we note that Goldwyn endeavored to raise eight issues in her brief, but those issues are largely unaccompanied by any substantive argument or analysis in support of her claims. Issues not adequately briefed are deemed waived or abandoned. *State v. Salary*, 309 Kan. 479, 481, 437 P.3d 953 (2019). Under Kansas Supreme Court Rule 6.02(a)(5) (2023 Kan. S. Ct. R. at 36), "[e]ach issue must begin with citation to the appropriate standard of appellate review and a pinpoint reference to the location in the record on appeal where the issue was raised and ruled on."

Goldwyn's brief fails to identify the controlling standards of review for each issue, it generally does not contain pinpoint cites to the record, and she does not cite any legal authority in support of her claims. A point raised incidentally in a brief but not argued is also deemed abandoned. *State v. Lowery*, 308 Kan. 1183, 1231, 427 P.3d 865 (2018). Failure to support a point with pertinent authority or show why it is sound despite a lack of supporting authority or in the face of contrary authority, is akin to failing to brief the issue. *State v. Meggerson*, 312 Kan. 238, 246, 474 P.3d 761 (2020). We recognize our obligation to liberally construe the pleadings of pro se litigants to give effect to their contents, rather than the labels and forms used to articulate their arguments. *State v. Kelly*, 291 Kan. 563, 565, 244 P.3d 639 (2010). But Goldwyn's claims are not presented in a posture through which they can effectively be decided. "The premise of our adversarial system is that appellate courts . . . sit . . . as arbiters of legal questions presented and argued by the parties before them." *National Aeronautics and Space Admin. v. Nelson*, 562 U.S. 134, 147 n.10, 131 S. Ct. 746, 178 L. Ed. 2d 667 (2011).

"[A]n appellate court sits as a court of review It is not the function of the appellate court to serve as advocate for any party to an appeal. That is the function of counsel. It would be unfair to the parties if it were otherwise. That is the reason for the sometimes expressed unwillingness of an appellate court to assume the role of counsel and advocate

for a party on appeal." *Hoskinson v. Heiman*, No. 122,120, 2021 WL 2282688, at *3 (Kan. App. 2021) (unpublished opinion).

The issues Goldwyn raises consist of the following:

- (1) The district court abused its discretion when it denied her request for a continuance;
- (2) The district court abused its discretion when it allowed admission of Plaintiff's Exhibit A into evidence when the drafter of that document was absent from trial and unavailable to testify as to its authenticity;
- (3) The district court erred in finding that MHA served Goldwyn with a three-day notice to quit for nonpayment of rent;
- (4) The district court abused its discretion in assessing the cost of the action against Goldwyn;
- (5) The district court erred in finding MHA was entitled to additional unpaid rent and late charges;
- (6) The district court imposed an excessively and impermissibly high appeal bond;
- (7) The district court failed to make reasonable accommodations to ensure Goldwyn had a full and fair opportunity to litigate her claims; and
- (8) The district court deprived Goldwyn of certain constitutional rights and her right to due process.

The first issue is the singular claim which arguably comes close to meeting the specifications required to obtain appellate review. Accordingly, issues two through eight are deemed abandoned.

The district court properly exercised its discretion when it denied Goldwyn's request for a continuance.

Goldwyn argues that the district court should have granted her last-minute motion for a continuance rather than require her to appear via zoom while she was ill. The ruling on a motion for continuance is discretionary with the trial court, and an order denying such requests will not be disturbed on appeal unless there is a clear showing of an abuse of discretion—which Goldwyn carries the burden to demonstrate. See *State v. Gentry*, 310 Kan. 715, 734, 449 P.3d 429 (2019). A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *Biglow v. Eidenberg*, 308 Kan. 873, 893, 424 P.3d 515 (2018).

Generally, district courts have the authority to "continue an action at any stage of the proceedings on just terms" for good cause. K.S.A. 2022 Supp. 60-240(b). But specific rules govern the availability of continuances during eviction trials. In those instances, "No continuance shall be granted unless the defendant requesting a continuance shall file a bond with good and sufficient security approved by the court, conditioned for the payment of all damages and rent that may accrue if judgment is entered against the defendant." K.S.A. 2022 Supp. 61-3807(b).

The record before us reflects that Goldwyn failed to file a bond in conjunction with her request for a continuance. She does not assert or otherwise offer evidence to the contrary on appeal. Thus, under K.S.A. 2022 Supp. 61-3807(b), denial of her request was required. Additionally, as MHA points out, Goldwyn fails to explain how she was prejudiced by the denial of a continuance, or how the grant of the same would have allowed her to present a better defense. Goldwyn has failed to sustain her burden to establish that the district court abused its discretion in this regard and, as a result, its decision concerning her continuance is affirmed.

MHA is entitled to receive attorney fees for the expenses it incurred as a product of litigating this appeal.

We conclude by addressing MHA's motion for attorney fees incurred on appeal. After the parties submitted their briefs and the matter was set on a docket, MHA moved for appellate attorney fees, asserting that Goldwyn has extensive experience as a pro se appellant and should be deterred from filing frivolous appeals, such as this one against a nonprofit provider of housing for seniors and low-income individuals.

Supreme Court Rule 7.07(b)(1) (2023 Kan. S. Ct. R. at 52) allows this court to award attorney fees when the district court could do so. Subsection (b)(2) of that Rule states that when a party moves for attorney fees on appeal, that party must attach an affidavit to the motion specifying "the nature and extent of the services rendered," "the time expended on the appeal," and "the factors considered in determining the reasonableness of the fee" under Kansas Rules of Professional Conduct 1.5 (2023 Kan. S. Ct. R. at 333), the rule governing reasonable attorney fees. Rule 7.07(b)(2)(A)(B)(C) (2023 Kan. S. Ct. R. at 52). Finally, Supreme Court Rule 7.07(c) (2023 Kan. S. Ct. R. at 52) allows an award of attorney fees when "an appeal has been taken frivolously, or only for the purpose of harassment or delay."

The district court had the authority to award attorney fees under K.S.A. 2022 Supp. 60-211(c), which is made applicable to limited actions by K.S.A. 61-2908. Further, MHA's motion includes the affidavit mandated by Rule 7.07(b)(2) and sufficiently evidences their request for attorney fees in the amount of \$4,266.50. Thus, the success of its motion turns on the validity of its contention that Goldwyn's appeal is frivolous. Such an appeal is identified by its failure to present a justiciable question and is "readily recognized as devoid of merit in that there is little prospect that it can ever succeed." *McCullough v. Wilson*, 308 Kan. 1025, 1037, 426 P.3d 494 (2018).

We find that Goldwyn's appeal arguably falls within what is classified as "frivolous." Even placing her briefing deficiencies aside, there was little prospect that Goldwyn could ever succeed on the merits of her appellate claims. In short, Goldwyn sought to retain possession of an apartment for which she never had a lease, while asserting the rights of a former tenant who was not a party to the action. She failed to specifically identify what relief this court could conceivably offer her, and she had vacated the premises by the time this appeal was docketed. Given the circumstances, we find MHA's request for attorney fees should be granted.

Affirmed, and motion for attorney fees granted.