

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 16, 2008 Session

IN RE ESTATE OF MARY NELL DORSEY

**Appeal from the Chancery Court for Cocke County
No. P-3610 Jon Kerry Blackwood, Senior Judge**

No. E2007-02410-COA-R3-CV - FILED AUGUST 28, 2008

In this probate case, John D. Thacker filed a claim against the estate of Mary Nell Dorsey, seeking reimbursement for various expenses that he says he paid on Ms. Nell Dorsey's behalf, prior to her death in 2000. Mr. Thacker failed to comply with a discovery order of the trial court. His claim was dismissed. Mr. Thacker appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

John D. Thacker, Cosby, Tennessee, appellant, pro se.

Clyde A. Dunn, Newport, Tennessee, for the appellee, Estate of Mary Nell Dorsey.

OPINION

At a hearing on August 20, 2007, the court ordered Mr. Thacker to provide documentation in support of his claim, including bank statements and tax returns, and announced that the claim would be dismissed unless Mr. Thacker complied within 30 days. Mr. Thacker failed to comply within 30 days. The claim was dismissed. Mr. Thacker complains on appeal, as he did below, that he was treated unfairly at the August 20 hearing; that his own request for discovery was wrongfully denied at that hearing; and that the trial court was biased against him. However, the fact remains that he failed to comply with a court order. That the court denied *his* discovery request is no excuse for his disobedience of the court's discovery order.

Mr. Thacker misapprehends the situation when he claims his case was dismissed because he was "denied access" to the evidence needed to prove his claims. In fact, his case was dismissed because *he disobeyed a court order* requiring him to produce documents in *his* possession. This is made clear by the court's orders, and Mr. Thacker does not deny that he

failed to produce the subject documents. Instead, he argues that *he believed* he had made compliance with the production order unnecessary by informing the court, by certified letter on the day after the hearing, of his intention to withdraw a portion of his claim.¹ Mr. Thacker states that “[w]ithdrawing this portion [of the claim] would do away with [opposing counsel]’s request for my banking statements and tax records.” Mr. Thacker appears not to recognize that, by failing to produce the documents in question, he did not merely fail to adhere to a request by counsel; he failed to obey a court order. For as long as that order remained in effect, Mr. Thacker was obligated to adhere to it. He cannot substitute his judgment for that of the court.

It is beyond dispute that trial courts may, in their discretion, dismiss a case where a plaintiff fails to “comply with [the] rules [of civil procedure] or any order of court.” Tenn. R. Civ. P. 41.02(1). See *Holt v. Webster*, 638 S.W.2d 391, 394 (Tenn. Ct. App. 1982). Mr. Thacker was given ample time to comply with the court’s order, and clear notice of the consequences if he failed to do so. It could hardly be clearer, therefore, that the dismissal was not an abuse of discretion.

As for Mr. Thacker’s vague allegations of unfairness at the hearing, even if these claims raised an appealable issue, we could not adjudicate it because Mr. Thacker has failed to provide us with a transcript or statement of the proceedings in accordance with Tenn. R. App. P. 24. He makes various assertions in his brief regarding what allegedly transpired at the hearing, but “the recitation of facts and argument contained in a brief submitted to this Court . . . are not evidence . . . [and] can[not] be considered in lieu of a verbatim transcript or statement of the evidence and proceedings.” *State v. Draper*, 800 S.W.2d 489, 493 (Tenn. Crim. App. 1990). Accordingly, we have no basis on which to assess Mr. Thacker’s claims, because we have no idea what transpired at the hearing in question. “When a party seeks appellate review there is a duty to prepare a record which conveys a fair, accurate and complete account of what transpired with respect to the issues forming the basis of the appeal.” *State v. Ballard*, 855 S.W.2d 557, 560 (Tenn. 1993). This duty – like all procedural and substantive rules – applies to *pro se* parties as well as to represented parties. *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003). “Absent the necessary relevant material in the record an appellate court cannot consider the merits of an issue.” *Ballard*, 855 S.W.2d at 561.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant, John D. Thacker. This case is remanded to the trial court for collection of costs assessed below, pursuant to applicable law.

CHARLES D. SUSANO, JR., JUDGE

¹ Mr. Thacker appears to believe this letter “withdrew” the relevant portion of claim. But claims are not “withdrawn” by certified letters to the court; they are properly withdrawn through formal pleadings, which must also be served on the opposing party. Tenn. R. Civ. P. 5.01, 5.06. Thus, Mr. Thacker’s statement that “I trusted the Court to notify [opposing counsel] of my withdrawal of this portion of my claim” is flawed in at least two ways. First, his letter was not a “withdrawal,” and second, it was Mr. Thacker’s duty – not the court’s – to serve any pleadings, amendments, motions, and other such papers, on the opposing party.