

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

TYLER V. O'REILLY AUTO. STORES

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

BILLY TYLER, APPELLANT,
V.
O'REILLY AUTOMOTIVE STORES, INC., DOING BUSINESS AS
O'REILLY AUTO PARTS, APPELLEE.

Filed May 22, 2012. No. A-11-856.

Appeal from the District Court for Douglas County, W. MARK ASHFORD, Judge, on appeal thereto from the County Court for Douglas County, MARCENA M. HENDRIX, Judge. Judgment of District Court affirmed.

Billy Tyler, pro se.

Albert M. Engles and Timothy R. Hook, of Engles, Ketcham, Olson & Keith, P.C., for appellee.

INBODY, Chief Judge, and IRWIN and SIEVERS, Judges.

IRWIN, Judge.

I. INTRODUCTION

This appeal arises from an action initiated in county court by Billy Tyler to recover damages after O'Reilly Automotive Stores, Inc. (O'Reilly), disposed of a car battery Tyler left at one of its stores. The county court granted Tyler summary judgment and ordered O'Reilly to pay Tyler \$5,000 in damages. O'Reilly appealed the county court's judgment to the district court. The district court vacated the award of summary judgment and the award of damages and remanded the case back to the county court.

Tyler appeals from the district court's order. However, in his brief to this court, Tyler failed to present any errors for our review and to provide a sufficient argument as the basis of his appeal. As a result, we reviewed the district court's decision for plain error. Having found no plain error, we affirm the judgment of the district court. Pursuant to this court's authority under

Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008), this case was ordered submitted without oral argument.

II. BACKGROUND

Tyler, acting pro se, filed an action in county court against O'Reilly after a car battery he brought to O'Reilly for recharging was recycled before he could return to retrieve it. In his complaint, Tyler asked that the county court require O'Reilly to replace the battery and that Tyler be "compensated as justice requires."

O'Reilly responded to Tyler's claims in a letter addressed to the county court. The letter indicated that O'Reilly has a policy whereby batteries dropped off at its stores must be retrieved within 7 days or the battery becomes the property of O'Reilly. Tyler did not return to retrieve his battery until 2 weeks after he had left it there. As a result, the battery was recycled pursuant to policy.

Ultimately, Tyler filed a motion requesting that the county court grant him summary judgment. After a hearing on Tyler's motion, where O'Reilly did not appear, the county court entered an order granting summary judgment to Tyler finding, "[Tyler] is entitled to judgment for the amount of his lost battery as well as appropriate [sic] damages for said theft plus attorney fees." Accordingly, the court entered judgment in the amount of \$5,000.

O'Reilly appealed the county court's order to the district court. After a hearing, the district court vacated the county court's orders which had granted Tyler summary judgment and awarded him \$5,000, because there was an issue of material fact as to whether a "theft" of Tyler's car battery had occurred. Additionally, the district court found that there was no evidence in the record to support the county court's award of \$5,000 to Tyler.

Tyler appeals from the district court's order here.

III. ANALYSIS

The Nebraska Constitution provides that the Supreme Court may promulgate rules of practice and procedure "[f]or the effectual administration of justice and the prompt disposition of judicial proceedings" Neb. Const. art. V, § 25. The rules adopted by the Supreme Court address, among other topics, the procedure for appealing decisions of the district court. The court has established rules to ensure that all parties have an opportunity to have their arguments heard.

In this case, the appellant, Tyler, has provided this court with a brief which is not in compliance with the Supreme Court's rules. See Neb. Ct. R. App. P. § 2-109 (rev. 2008). The primary problem with Tyler's brief is that it does not contain any assignments of error. See § 2-109(D)(1)(e). Court rules provide that briefs shall include a "separate, concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error. Each assignment of error shall be separately numbered and paragraphed." § 2-109(D)(1)(e).

In addition to court rules, state law provides that an appellant's brief "shall set out particularly each error asserted and intended to be urged for the reversal, vacation, or modification of the judgment." Neb. Rev. Stat. § 25-1919 (Reissue 2008). Tyler's brief does not set out any errors.

Moreover, Tyler's brief does not contain a proper argument section to detail the basis of his appeal from the district court's order. Section 2-109(D)(1)(i) provides:

The argument shall present each question separately, and shall present each proposition of law as best sets forth the contentions of the party. Authorities relied upon shall be quoted or otherwise discussed. A party may make such further statements of fact or quotations from the record as deemed necessary to properly present the question, supporting such facts by appropriate references to the record.

Under the "Argument" heading in Tyler's brief, he includes one sentence which merely states that the district court's decision is "moot & illegal." Brief for appellant at 2. Tyler does not adequately explain his contention, does not cite to any authority, and does not provide supporting facts from the record for his conclusory statement.

To be considered by an appellate court, an alleged error must be both specifically assigned and specifically argued in the brief of the party asserting the error. *City of Gordon v. Montana Feeders, Corp.*, 273 Neb. 402, 730 N.W.2d 387 (2007). Tyler does not specifically assign as error any decision of the district court and does not provide sufficient argument to support his contention that the district court's order is in any way incorrect.

We also note that Tyler's brief does not comply with other court rules, including the court's rules indicating that an appellate brief must include a proper statement of the basis of jurisdiction of the appellate court, annotations to the record, and a summary of the argument. See § 2-109(D)(1)(c), (g), and (h).

Because Tyler's brief does not comply with court rules, this court may either consider this case as one in which no brief was filed by Tyler or, alternatively, examine the proceedings for plain error. See *City of Gordon v. Montana Feeders, Corp.*, *supra*. Plain error exists where there is an error, plainly evident from the record but not complained of at trial, which prejudicially affects a substantial right of a litigant and is of such a nature that to leave it uncorrected would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process. *Worth v. Kolbeck*, 273 Neb. 163, 728 N.W.2d 282 (2007).

In the interest of fairness, the court has reviewed the record for plain error, and we have found none. Accordingly, we affirm the order of the district court which vacated the county court's orders granting Tyler's motion for summary judgment and awarding him a \$5,000 judgment.

IV. CONCLUSION

The judgment of the district court is affirmed.

AFFIRMED.