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TENNESSEE
WORKERS' COMPENSATION
APPEALS BOARD

TENNESSEE BUREAU OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD

Jacqueline Hancock	)	Docket No. 2020-06-1527
	)	
v.	)	State File No. 45480-2018
	)	
Vanderbilt University Medical Center	)	
	)	
	)	
Appeal from the Court of Workers' Compensation Claims Joshua D. Baker, Judge	)	

Affirmed and Certified as Final

Following the employee's reporting of a work-related shoulder injury, the employer accepted the employee's claim and provided her with a panel of physicians. Following treatment by the authorized provider, the employee was returned to work without restrictions in July 2018. She subsequently sought unauthorized medical care, resulting in the employer's filing a notice of denial on October 23, 2018. Approximately two years later on October 12, 2020, the employee filed a petition for benefit determination. The employer responded by filing a motion for summary judgment and, in support of its motion, asserted that its last payment of benefits occurred on August 1, 2018 and that the employee filed her petition more than one year after its last voluntary payment. Following a hearing, the trial court concluded the employer had negated an essential element of the employee's claim and granted its motion. The employee has appealed. We affirm the trial court's order, find the appeal to be frivolous, and certify the order as final.

Judge Pele I. Godkin delivered the opinion of the Appeals Board in which Presiding Judge Timothy W. Conner and Judge David F. Hensley joined.

Jacqueline K. Hancock, Lebanon, Tennessee, employee-appellant, pro se

Nathaniel K. Cherry, Nashville, Tennessee, for the employer-appellee, Vanderbilt University Medical Center

Memorandum Opinion[1]

Jacqueline Hancock ("Employee") was a nurse employed by Vanderbilt University Medical Center ("Employer") when she reported injuring her left shoulder on June 15, 2018, while in the course and scope of her employment. After reporting the injury, Employee was seen at Vanderbilt Occupational Health Clinic ("VOHC") and subsequently selected VOHC as her authorized treating provider.

Employee was initially evaluated for right upper back pain, was prescribed pain medication, and was instructed to apply ice packs to the injured area. Employee was assigned work restrictions of lifting no more than ten pounds, no twisting/bending, and no pushing/pulling of more than 10 pounds. At her second visit with VOHC, Employee was provided similar treatment and advised to continue the work restrictions previously recommended. At a subsequent visit, the restrictions of no twisting/bending were lifted. On July 23, 2018, Employee was released from VOHC's care and allowed to return to work without restrictions. She was advised to return for follow-up treatment as needed.

Employee subsequently sought unauthorized medical treatment from an orthopedic physician. After Employer learned that Employee was receiving unauthorized treatment, it filed a notice of denial on October 23, 2018. In its notice of denial, Employer claimed that its attempts to contact Employee were unsuccessful.

On October 12, 2020, almost two years after the notice of denial was filed, Employee filed a petition seeking workers' compensation benefits stemming from her 2018 shoulder injury. In the petition, Employee asserted that Employer "didn't [want] to help me with my injury." In response, Employer filed a motion for summary judgment asserting Employee's claim was barred by the statute of limitations.

Following a hearing, the trial court granted Employer's motion, concluding Employer had negated an essential element of Employee's claim. More specifically, the court concluded that Employee waited more than one year after Employer's last payment of benefits before filing her petition and that the petition was, therefore, untimely. Employee has appealed.

The grant or denial of a motion for summary judgment is a matter of law that we review de novo with no presumption that the trial court's conclusions are correct. *See Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). As such, we must "make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Id.*

[1] "The appeals board may, in an effort to secure a just and speedy determination of matters on appeal and with the concurrence of all judges, decide an appeal by an abbreviated order or by memorandum opinion, whichever the appeals board deems appropriate, in cases that are not legally and/or factually novel or complex." Tenn. Comp. R. & Regs. 0800-02-22-.03(1) (2020).

Our Supreme Court has explained the requirements for a movant to prevail on a motion for summary judgment:

> [W]hen the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense. We reiterate that a moving party seeking summary judgment by attacking the nonmoving party's evidence must do more than make a conclusory assertion that summary judgment is appropriate on this basis. Rather, Tennessee Rule 56.03 requires the moving party to support its motion with a separate concise statement of material facts as to which the moving party contends there is no genuine issue for trial. Each fact is to be set forth in a separate, numbered paragraph and supported by a specific citation to the record.

Id. at 264-65 (internal quotations and citations omitted). Thus, for Employer to prevail on its motion for summary judgment, Employer must show that it negated an essential element of Employee's claim or that Employee's evidence is insufficient to establish her claim as a matter of law.

Employee does not identify any reviewable issue in her notice of appeal and failed to file a brief on appeal. In her notice of appeal, Employee requests a "fair and just hearing and trial to present all facts in my entire case," asserting "all the facts important to my case were not heard." We are mindful that Employee is self-represented in this appeal, as she was in the trial court. Parties who decide to represent themselves are entitled to fair and equal treatment by the courts. *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000). However, as explained by the Court of Appeals,

> courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary. Thus, the courts must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe. . . . Pro se litigants should not be permitted to shift the burden of the litigation to the courts or to their adversaries.

Hessmer v. Hessmer, 138 S.W.3d 901, 903-04 (Tenn. Ct. App. 2003) (citations omitted).

Employee failed to articulate specific issues for our review, failed to describe how the trial court purportedly erred in its rulings, and failed to provide any relevant legal authority in support of her position. When an appellant fails to offer substantive arguments on appeal, an appellate court's ability to conduct meaningful appellate review

is significantly hampered. *Holmes v. Ellis Watkins d/b/a Watkins Lawn Care*, No. 2017-08-0504, 2018 TN Wrk. Comp. App. Bd. LEXIS 7, at *3-4 (Tenn. Workers' Comp. App. Bd. Feb. 13, 2018). Moreover, "where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived." *Sneed v. Bd. of Prof'l Responsibility of the Sup. Ct. of Tenn.*, 301 S.W.3d 603, 615 (Tenn. 2010). It is not our role to search the record for possible errors or to formulate a party's legal arguments where that party has provided no meaningful argument or authority to support its position. *Cosey v. Jarden Corp.*, No. 2017-01-0053, 2019 TN Wrk. Comp. App. Bd. LEXIS 3, at *8 (Tenn. Workers' Comp. App. Bd. Jan. 15, 2019). As Tennessee appellate courts have explained, were we to search the record for possible errors and raise issues and arguments for Employee, we would be acting as her counsel, which the law prohibits. *See, e.g.*, *Webb v. Sherrell*, No. E2013-02724-COA-R3-CV, 2015 Tenn. App. LEXIS 645, at *5 (Tenn. Ct. App. Aug. 12, 2015).

Nonetheless, we must "make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Rye*, 477 S.W.3d at 250. Employer supported its motion with a statement of allegedly undisputed facts asserting that Employee reported sustaining an injury on June 15, 2018, and that Employer last issued a payment for medical care on August 1, 2018. Further, Employer's statement asserted that no further payments were made to or on Employee's behalf after August 1, 2018, and that Employee has not received any authorized medical treatment since July 23, 2018. In addition, Employer's statement asserted that it denied Employee's claim on October 23, 2018, and that Employee's petition for benefits was filed more than one year later on October 12, 2020. Although Employee disputed portions of Employer's statement of undisputed facts, she failed to establish any genuine issue as to any material fact. Accordingly, we conclude Employer negated an essential element of Employee's claim and demonstrated that Employee's evidence was insufficient to establish an essential element of her claim. Thus, we find no error in the trial court's granting of Employer's motion for summary judgment.

Finally, Employer contends Employee's appeal is "not only meritless, but also completely frivolous," and it should be awarded attorneys' fees. In addition, Employer asserts that Employee waited more than two years before filing her petition and her "lack of effort to even present an argument . . . should be looked at as further evidence of the frivolousness of [the] same and as an effort by Employee to delay the inevitable."

A frivolous appeal is one that is devoid of merit or brought solely for delay. *Yarbrough v. Protective Servs. Co., Inc.*, No. 2015-08-0574, 2016 TN Wrk. Comp. App. Bd. LEXIS 3, at *11 (Tenn. Workers' Comp. App. Bd. Jan. 25, 2016). "[P]arties should not be required to endure the hassle and expense of baseless litigation. Nor should appellate courts be required to waste time and resources on appeals that have no realistic chance of success." *Id.* at *10-11 (citations omitted). We conclude Employee's appeal is devoid of merit and is frivolous. However, we exercise our discretion not to award

attorneys' fees or other expenses for Employee's frivolous appeal. *See* Tenn. Comp. R. & Regs. 0800-02-22-.09(4) (2020).

The trial court's September 3, 2021 order granting Employer's motion for summary judgment and dismissing Employee's claim with prejudice is affirmed and certified as final. Costs on appeal have been waived.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Appeals Board's decision in the referenced case was sent to the following recipients by the following methods of service on this the 5th day of January, 2022.

Name	Certified Mail	First Class Mail	Via Fax	Via Email	Sent to:
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Joshua D. Baker, Judge				X	Via Electronic Mail
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