

NOT DESIGNATED FOR PUBLICATION

No. 125,278

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

SHAMROCK ENGINEERING, LLC,

and

KEVIN P. O'CONNELL,
Appellees,

v.

CHRISTOPHER SILVA,
Appellant.

MEMORANDUM OPINION

Appeal from Crawford District Court; KURTIS I. LOY, judge. Opinion filed March 17, 2023.
Affirmed.

Christopher Silva, appellant pro se.

Timothy L. Fielder, of Girard, for appellees.

Before HILL, P.J., BRUNS and WARNER, JJ.

PER CURIAM: Kevin O'Connell and his business entity, Shamrock Engineering LLC, sued Christopher Silva to recover on some unpaid invoices. The district court found in O'Connell's and Shamrock's favor. It ordered Silva to pay the unpaid invoices and storage costs for Silva's parts that O'Connell retained under a mechanic's lien. Silva appeals, arguing that the district court committed several errors at trial. Because of

inadequate briefing, we must hold that Silva has abandoned his appeal and we affirm the district court's judgment.

The parties cooperated for some time before their relationship soured.

O'Connell began doing business with Silva in January 2017 when Silva asked him to establish a distributorship for his company, New Era Label, which sold labeling equipment. The parties contracted for Shamrock to make installations, engineering, consulting, service, and repairs for New Era Label's equipment and in return would get a 35 percent discount on new equipment. Silva would then sell labeling equipment while Shamrock handled the engineering aspects of their arrangement.

Evolabel, a Swedish company that Silva was selling equipment for, sent Silva a demonstration unit that he would take to sales demonstrations for the next several years. The unit had to be disassembled to fit into a vehicle for travel, and O'Connell was responsible for assembly, disassembly, and repairs. One time, Shamrock charged Silva \$690 for assembly and repairs after Silva returned the unit damaged. O'Connell had to spend extra time fixing the unit and buy replacement parts. Silva never paid the invoice although he said he would.

In April 2019, Silva returned the labeler unit to Shamrock severely damaged and disassembled. The parties did not repair the labeler, and it has just been stored at O'Connell's shop. The parties' relationship quickly deteriorated after that. They exchanged unfriendly emails about Silva coming to get the parts of the labeler, and they decided to terminate their relationship.

O'Connell later testified that Silva did not attempt to pick up the parts for weeks. He said Silva emailed him and said that he was never going to pay his outstanding invoices, so O'Connell told Silva that he would hold the labeler parts as security.

O'Connell also informed Silva that he would start charging him for storing the labeler parts. After the parties exchanged emails for a while, Silva tried to pick up his parts. O'Connell told Silva he could have them if he paid his invoices.

This matter had a torturous path to trial.

O'Connell sued, alleging that Silva owed Shamrock \$3,237 for goods and services and \$6,000 for storage fees to date, plus interest. O'Connell provided three invoices showing Silva owed \$690 for labor and parts from January 2019; \$2,547 for labor, travel, and hotel costs from March 2019; and \$6,000 in storage costs from May to August 2019.

Silva answered, denying the claims and filed a counterclaim against O'Connell. He alleged O'Connell slandered him to the Coleman Company of Wichita so he could steal his account. Silva said O'Connell successfully took business away from his company, New Era Label. Silva also alleged that O'Connell slandered him to the vice president of Silva's vendor, Evolabel, to try to steal his contract. O'Connell also allegedly tried to contact Evolabel's CEO, who called Silva when he learned of O'Connell's actions.

Silva also claimed O'Connell broke the law by committing "[f]alse [v]alor and [s]lander" by representing to both him and the Coleman Company that O'Connell was a veteran and a former nuclear submarine mechanic in the Navy. Silva alleges that O'Connell was never in the military and profited from his lie.

O'Connell answered Silva's counterclaim and denied every allegation. He moved to dismiss for failure to state a claim on which relief can be granted. O'Connell basically argued that Silva failed to identify a cause of action or outline the elements proving a cause of action, and Silva also failed to identify what injunctive or monetary relief he sought.

In response to O'Connell's motion to dismiss, Silva clarified that he was seeking monetary damages for the labeler parts O'Connell refused to return, alleging it amounted to conversion. He also reiterated that he claimed monetary damages due to the loss of business because of O'Connell's alleged slander. Silva then expounded on the validity of the invoices and how he believed they were fraudulent. He then alleged that O'Connell's lawsuit was frivolous and asked that the court award him \$1,000 from O'Connell's attorney for his time driving to Pittsburg for court.

The district court granted O'Connell's motion to dismiss in part, finding both the counterclaims for defamation and conversion were time-barred. The court instructed that Silva could file an amended answer and counterclaim limited to a request for return of his parts.

Silva then filed an amended answer and counterclaim against O'Connell. This time Silva limited his claim to a request for the return of parts plus a 30 percent restocking fee of \$3,000. Silva explained that O'Connell emailed him in April 2019 telling him to pick up his property from O'Connell's shop. Silva said he drove to O'Connell's shop three times in May 2019 to get his parts but was denied. Silva also requested \$451.44 for 792 miles driven at 57 cents per mile from Blue Springs, Missouri, to Pittsburg, Kansas, three times.

Silva moved to set aside the journal entry of November 4, 2020, in which the district court dismissed his counterclaims as time-barred. He also requested leave to amend his answer and counterclaim. The district court granted Silva's motion. With help from an attorney, Silva reinstated his counterclaim for conversion of his parts, a HP laptop, and a green shirt. He also added a counterclaim of replevin.

Another court trial was held in March 2022. Silva did not send his trial notebook to the court or opposing party, so he was not allowed to present his exhibits. When asked

why he did not send the trial notebook, he tried to say he did not receive the email instructing him to do so. When the court shut down Silva's excuse and reminded him that he agreed to communicate by the email address he provided, Silva said he must have overlooked it.

O'Connell testified at trial and provided the facts about his and Silva's relationship as they are outlined above. Silva testified in his own defense and in support of his counterclaim. Silva testified that the three invoices O'Connell provided were fraudulent. He alleged that O'Connell put a fraudulent lien on his parts, which allowed him to charge exorbitant storage fees since their falling out. Silva alleged that O'Connell was trying to steal his labeler distributorship. Silva also argued that O'Connell took his property through conversion through the fraudulent lien.

The district court held that Silva did not meet his burden on the conversion counterclaim and dismissed it. The court held there was sufficient evidence that Silva did not pay the first two outstanding invoices for work and ordered Silva to pay those in full. As for storage, the court found that O'Connell had been storing the parts and had to because of his lien. The court awarded O'Connell \$15 a day for storage for 12 months for a total of \$5,475.

Silva asked for a new trial, arguing that a new trial was required "based on errors made by the judge during trial as well as the judicial secretary." The court dismissed Silva's motion for a new trial because it did not comply with the statutory requirements.

Silva brings this appeal, arguing that the district court committed several trial errors.

The appellant's brief is totally inadequate and prevents this court from properly analyzing the evidence and the issues.

Shamrock argues that Silva has failed to adequately brief his appellate issues and this court should consider his claims waived and abandoned. Shamrock says Silva's brief violates Supreme Court Rule 6.02 (2022 Kan. S. Ct. R. at 35), specifically, he failed to

- provide a concise statement of the nature of the case;
- include a statement, without elaboration, of the issues to be decided; and
- include a concise statement, without argument, of the facts material to his stated issues.

In response, Silva argues that his brief fully complies with Rule 6.02. He argues that even if it does not, the court can ignore mistakes that do not prejudice Shamrock's substantive rights, as technicalities must not get in the way of substantive justice. See K.S.A. 2022 Supp. 60-261. Silva relies on our rule that pro se litigants are entitled to liberal construction of pleadings and asserts that if the court can reasonably read the pleadings to state a valid claim on which the litigant could prevail, "it should do so despite the failure to cite proper legal authority, confusion of various legal theories, or unfamiliarity with pleading requirements."

Liberal construction of pleadings is one thing, but an appellate brief is something else. We agree with another panel of our court when it held that appellants do not meet their burden of establishing error on appeal by making conclusory contentions with no analysis, let alone evidence, to support their claims. *Joritz v. University of Kansas*, 61 Kan. App. 2d 482, 503, 505 P.3d 775 (2022). And an appellant's brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record. Basically, an appellate judge "should not have to scour an appellant's brief or the record on appeal to understand the appellant's arguments." 61 Kan. App. 2d at 483.

And it is axiomatic that when facts are necessary to an argument, the record must supply those facts, and a party relying on those facts must provide an appellate court with a specific citation to the point in the record where the facts can be verified. *Friedman v. Kansas State Bd. of Healing Arts*, 296 Kan. 636, 644, 294 P.3d 287 (2013).

If we strain, we can say that Silva did comply with Rule 6.02. While he provided a nature of the case, it was limited to the procedural background of the case. Silva's brief also contains a statement of the facts material to his issues. Not all the facts he provides, however, are found in the record, and his fact section does contain some argument. But that is as far as we are willing to go.

Silva did not adequately explain his arguments or support his positions with authority or evidence. He repeatedly claims that his arguments are "clearly" supported by the evidence, but never clarifies what that evidence is. Silva not only fails to support his arguments with evidence in the record, but he also fails to point to *any* evidence for issues II, III, and V. We rely on the ruling in *Joritz* and hold that Silva has waived or abandoned all arguments by failing to adequately brief the issues.

Affirmed.