NOT DESIGNATED FOR PUBLICATION

No. 125,311

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

ELVIS J. GRUBBS,
Appellant,

v.

KANSAS CORPORATION COMMISSION,
Appellee.

MEMORANDUM OPINION

Appeal from Shawnee District Court; THOMAS G. LUEDKE, judge. Opinion filed June 9, 2023. Affirmed.

Elvis J. Grubbs, appellant pro se.

David G. Cohen, assistant general counsel, Kansas Corporation Commission, for appellee.

Before GREEN, P.J., HURST, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: After Westar Energy, now known as Evergy Kansas Central, Inc. (Evergy), required Elvis J. Grubbs to pay a security deposit in connection with his Evergy account, Grubbs filed an administrative complaint with the Kansas Corporation Commission (KCC). Grubbs' complaint alleged that Evergy failed to provide the five-day advance notice of the security deposit as required by Evergy's terms of service, and he asked for the return of his security deposit. Based on the written submissions of the parties, the KCC found Evergy gave the required five-day notice and dismissed Grubbs' complaint. The Shawnee County District Court upheld the dismissal, and Grubbs now appeals to this court. We find no error by the district court and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The underlying facts giving rise to this case are not disputed. Grubbs was an existing Evergy customer but was billed for, and required to pay, a security deposit in order to continue receiving utility services. The reason for the security deposit was Grubbs' failure on two occasions to comply with payment agreements he made with Evergy. Grubbs did not contest that he had failed to make the promised payments. Instead, Grubbs challenged the security deposit because Evergy did not provide the five-day advance notice as required by Evergy's terms of service. When Grubbs could not achieve a satisfactory resolution of the security deposit issue with Evergy, he filed a formal complaint with the KCC.

The KCC exercises regulatory authority over Evergy, including its interactions with customers and the utility's application of its written "General Terms and Conditions" (GT&C) which govern various aspects of the utility's operation. GTC 3.02.02 permits the imposition of a security deposit on a customer who, like Grubbs, fails to twice comply with a payment agreement, but it requires that Evergy provide the customer with the five-day notice before it is assessed. Grubbs contends he never received that notice.

Acting pro se, Grubbs filed his initial formal complaint with the KCC on April 9, 2019. It was dismissed for failing to meet regulatory standards for formal complaints set forth in K.A.R. 82-1-220(b)—the specific defects being the failure to provide a narrative of the circumstances giving rise to his complaint and for failure to state the relief he was seeking. Under the terms of the dismissal, Grubbs was given 30 days to amend his complaint. He did so, but his first amended complaint was rejected, as was his second amended complaint. The amended complaints were dismissed for the same reasons as the original complaint. Grubbs persevered on his second amended complaint by filing a petition for reconsideration, which was granted. The KCC accepted Grubbs' second amended complaint for filing and directed Evergy to file a response. Significantly, the

only claim contained in Grubbs' second amended complaint was that Evergy failed to give the five-day notice of the security deposit, and the only relief he sought was for the return of his $395 security deposit.

In its answer to Grubbs' complaint, Evergy admitted assessing a security deposit and asserted that it provided notice to Grubbs by email on January 25, 2019. Evergy issued the bill containing the first installment of the security deposit on February 21, 2019. It was due in late March. On March 28, 2019, Grubbs contacted Evergy's customer service to question the imposition of a security deposit during the Cold Weather Rule period. During the same phone call, Grubbs replaced email contact with phone contact as his preferred method of communication with the utility service provider.

When Grubbs requested a copy of the security deposit email, Evergy could not provide it to him. Evergy explained that it had a document retention policy under which it only maintained emails for 60 days, so it no longer had a copy of the actual email. And Evergy never provided the KCC with a copy of the actual email. Instead, in its answer to the complaint, Evergy provided a customer contact log printout from Grubbs' account with the following line-item entry:

"01/25/19 AW SYSTEM DEPOSIT EMAIL SENT—2 BROKEN PAY AGMTS."

Grubbs filed three pro se responses after Evergy filed its answer. The first response disputed Evergy's assertion that it had provided him with notice before imposing the security deposit. The second response from Grubbs was a "Petition for Perjury" alleging that Evergy made intentionally false statements concerning the email notification. He asked the KCC to find Evergy "guilty of perjury and pay the amount of $49,000." Finally, after receiving a copy of the KCC staff report recommending dismissal of his complaint, Grubbs filed another "answer" in which he contended Evergy had no

proof of sending any email to him and it violated its GT&C. The only relief sought in Grubbs' third response was that "the Commission deny the petition" of Evergy.

The KCC issued an order denying Grubbs' request for reimbursement of his $395, concluding that Evergy had complied with the notice requirement before assessing the security deposit. The KCC acknowledged that Evergy did not produce the actual email, but it found Evergy's explanation, along with the customer log indicating an email notice was sent to Grubbs, to be sufficient evidence to establish that Evergy complied with the five-day notice requirement in its GT&C. The order also noted that Grubbs' original complaint, which had been dismissed, alleged that Evergy also violated the CAN-SPAM Act, K.S.A. 12-822, and K.S.A. 50-6,107. But when Grubbs filed his amended complaints in June 2019, he did not include these claims. He only alleged Evergy violated its GT&C and sought the return of his security deposit.

In its order denying Grubbs' complaint, in a section of the order entitled "Claims Not Before the Commission," the KCC noted that Grubbs' original complaint alleged a CAN-SPAM Act violation as a basis for requiring the return of his deposit, and that Grubbs had accused Evergy of perjury. And the KCC acknowledged that when Grubbs filed his answers to Evergy's response to the complaint and to the KCC staff recommendation, Grubbs again mentioned the CAN-SPAM Act violations and accused Evergy of perjury. The KCC ruled that the only allegation properly before it was the one contained in his formal complaint—whether Evergy provided timely notice of the security deposit requirement.

Grubbs filed a timely petition for reconsideration with the KCC. He again challenged whether notice was provided, raising a new hearsay argument based on the Federal Rules of Evidence, and he complained that the KCC failed to address his perjury allegations. Again, Grubbs' prayer for relief only asked that Evergy "return the security deposit in the amount of $395.00." The KCC denied Grubbs' motion, finding his motion

to be an expression of "his general dissatisfaction with the Commission's determination," and "incomplete, general, and unsupported statements" that fail to meet the requirements of K.S.A. 77-529(a). The KCC also noted that Grubbs' "answers," in which he raised his additional complaints, were simply responses which did not require any KCC action.

Grubbs next filed a "Notice of Appeal" in the Shawnee District Court challenging the KCC decision dismissing his complaint. At this point, Grubbs' claims expanded beyond those contained in his administrative complaint. As to Evergy, Grubbs alleged breach of contract, perjury, wrongful assessing the security deposit, and failure to timely file an answer to Grubbs' complaint. He asked the district court to award $900,395 in damages against Evergy. Also for the first time, Grubbs accused the KCC of perjury, breach of contract, unspecified violations of due process, abuse of power, race harassment, and discrimination, and he asked the district court to award him the sum of $3,000,000.

The KCC filed a motion to dismiss without prejudice Grubbs' petition, contending that the petition failed to set forth a basis for relief under the Kansas Judicial Review Act (KJRA). The KCC also sought permission to file the documents related to Grubbs' account under seal. The district court granted both motions, but the court allowed Grubbs 14 days to file an amended petition complying with K.S.A. 77-614(b).

When Grubbs filed his amended notice of appeal, he referenced that Evergy violated the Privacy Act of 1974 and noted he and his wife intended to file a complaint with the "Office of Civil Rights" for the Privacy Act violation, race harassment, and discrimination. He also added an $11,000 damage claim to his initial $900,000 claim, and explained he was seeking damages for "all actual, incidental and consequential damages, past, present and future pain and suffering, lost past household contributions, for costs incurred in filing this action, and for such other and future relief as this Court deems just and proper under the circumstances." Grubbs' claim against the KCC remained largely

the same, though he added $150,000 to his damage claim and clarified that the KCC had violated his equal protection rights under the Fourteenth Amendment.

On Evergy's motion, the district court dismissed it from the proceedings as an improper party to a KJRA proceeding. The district court ordered Grubbs and the KCC to provide briefs and then issued its Memorandum Decision and Order, denying Grubbs' petition for judicial review. Grubbs has timely appealed.

ANALYSIS

I. *Grubbs' claims are not properly presented to the court for decision.*

The KJRA applies to agency action by the KCC and is the exclusive means of judicial review of such agency action. K.S.A. 66-118c; K.S.A. 77-606; *Platt v. Kansas State University*, 305 Kan. 122, 128, 379 P.3d 362 (2016). "Agency action" is statutorily defined as "(1) [t]he whole or a part of a rule and regulation or an order; (2) the failure to issue a rule and regulation or an order; or (3) an agency's performance of, or failure to perform, any other duty, function or activity, discretionary or otherwise." K.S.A. 77-602(b); 305 Kan. at 128. The KCC engaged in "agency action" when it undertook review of Grubbs' formal complaint against Evergy.

Under the KJRA, actions of an administrative agency are presumed valid. *Sierra Club v. Mosier*, 305 Kan. 1090, 1113, 391 P.3d 667 (2017). The party asserting the invalidity of an agency action bears the burden of proof on appeal. K.S.A. 77-621(a)(1); *Golden Rule Ins. Co. v. Tomlinson*, 300 Kan. 944, 953, 335 P.3d 1178 (2014). Moreover, the scope of review by a court of an administrative agency's decision is limited by K.S.A. 77-621(c). *Gilliam v. Kansas State Fair Bd.*, 62 Kan. App. 2d 236, 244, 511 P.3d 969 (2022).

K.S.A. 77-529(a)(1) mandates the filing of a petition for reconsideration with the KCC by an aggrieved party as a prerequisite to seeking judicial review of a KCC decision. And K.S.A. 66-118b provides that "[n]o party shall, in any court, urge or rely upon any ground not set forth in the petition" for reconsideration. Thus, to properly raise an argument in a petition for judicial review, it must have been raised in the petition for reconsideration. *Kingsley v. Kansas Dept. of Revenue*, 288 Kan. 390, 406, 204 P.3d 562 (2009); see K.S.A. 77-614(b)(6). Significantly, the only relief sought by Grubbs in his petition for reconsideration is the return of his security deposit—and he admits that has occurred. Because Grubbs has received the only relief he sought in his administrative complaint and petition for reconsideration, the various complaints raised by Grubbs over the security deposit are moot. Stated differently, even if we agreed with Grubbs that Evergy failed to give the five-day notice, that the KCC relied on improper hearsay evidence, or that Evergy was allowed to file an untimely answer to the complaint, the only remedy would be that which Grubbs acknowledges he has already obtained—the return of his security deposit.

A case becomes moot when the controversy has ended, and any judgment rendered by the court would be ineffectual for any purpose and would have no impact on the legal rights of the litigants. *Roll v. Howard*, 316 Kan. 278, 284, 514 P.3d 1030 (2022). Mootness is a discretionary policy based on judicial economy; it is not jurisdictional. *State v. Roat*, 311 Kan. 581, 584-85, 466 P.3d 439 (2020). Nevertheless, the role of the courts is to "'determine real controversies relative to the legal rights of persons and properties which are actually involved in the particular case properly brought before it and to adjudicate those rights in such manner that the determination will be operative, final, and conclusive.'" 311 Kan. at 590 (quoting *State v. Hilton*, 295 Kan. 845, 849, 286 P.3d 871 [2012]).

The sole relief sought by Grubbs in his second amended complaint was the return of his security deposit. The district court found that Evergy refunded the security deposit

to Grubbs. Accordingly, the district court ruled that any issue related to the KCC's decision to deny Grubbs' administrative complaint was now moot. Grubbs advances no argument that the trial court erred in making the factual determination that the security deposit had been returned. Furthermore, Grubbs does not argue that the district court erred as a matter of law by finding that the security deposit issue was moot. Return of the security deposit was the relief Grubbs requested in his amended complaint and in his petition for reconsideration. We agree with the district court that any errors the KCC made in adjudicating Grubbs' complaint over the security deposit became moot when Evergy returned that money. The administrative complaint over the security deposit was fully resolved when Grubbs was provided the relief he requested—the return of $395.

II. *Grubbs' additional claims against Evergy fail on the merits and for inadequate briefing.*

As a pro se litigant, Grubbs is entitled to have his pleadings liberally construed. This means only that a court is not bound by the labels a pro se litigant attaches to his or her argument; the court will give effect to the substance of an argument. Liberal construction does not mean a court will devise an argument for the litigant or ignore procedural rules governing the litigation. See *Joritz v. University of Kansas*, 61 Kan. App. 2d 482, 498, 505 P.3d 775, *rev. denied* 315 Kan. 968 (2022); *In re Estate of Broderick*, 34 Kan. App. 2d 695, 701, 125 P.3d 564 (2005).

> "'A pro se litigant in a civil case is required to follow the same rules of procedure and evidence which are binding upon a litigant who is represented by counsel. Our legal system cannot function on any basis other than equal treatment of all litigants. To have different rules for different classes of litigants is untenable. A party in civil litigation cannot expect the trial judge or an attorney for the other party to advise him or her of the law or court rules, or to see that his or her case is properly presented to the court. A pro se litigant in a civil case cannot be given either an advantage or a disadvantage solely because of proceeding pro se.'" 34 Kan. App. 2d at 701 (quoting *Mangiaracina v. Gutierrez*, 11 Kan. App. 2d 594, 595-96, 730 P.2d 1109 [1986]).

Kansas Supreme Court Rule 6.02(a)(5) (2023 Kan. S. Ct. R. at 36) requires an appellate brief to separate arguments by legal issue. Those arguments must be keyed to the facts of the case by appropriate citation to the record on appeal and must be supported by authority unless the author provides a compelling argument why the position is legally sound without authority. Each legal issue must begin with a citation to the appropriate standard of review. When a litigant disregards this rule, an appellate court considers the issue inadequately briefed and therefore waived or abandoned. See *In re Marriage of Williams*, 307 Kan. 960, 977, 417 P.3d 1033 (2018).

Grubbs' brief fails to provide authority or even mention the proper standard of review. His argument often consists of a single conclusory statement not based on any facts in the record. For example, his claim for consequential damages of more than $3,000,000 is not based on evidence; rather, it is a simple conclusory statement. It is not clear whether Grubbs is seeking recovery from Evergy, the KCC, or both. Regardless, the record does not contain any evidence of actual damages suffered by Grubbs, and K.S.A. 66-176 only authorizes an award for "actual damages." Thus, even if the KCC considered Grubbs' other claims against Evergy, such as the perjury claim, the failure to present evidence of actual damages means the KCC could not provide the monetary remedy Grubbs was seeking.

Furthermore, other than the security deposit issue, Grubbs' arguments do not connect the facts in the record and the legal authorities cited. None of his arguments support a conclusion that an administrative agency such as the KCC can adjudge a utility company "guilty" of perjury and impose damages. Grubbs neither acknowledges the constraints of judicial review of an agency decision under the KJRA nor tells the court whether or how those constraints apply to the issues he raises on appeal. Grubbs' failure to articulate the legal and factual basis for his claims for relief places this court in the untenable position of making or constructing arguments for Grubbs, thus causing the

court to become an advocate. As a panel of this court stated in *Hoskinson v. Heiman*, No. 122,120, 2021 WL 2282688, at *3 (Kan. App. 2021) (unpublished opinion) (quoting *Thummel v. King*, 570 S.W.2d 679, 686 [Mo. 1978]), *rev. denied* 315 Kan. 968 (2022):

> "'Failure to properly state the points relied on indicates a lack of understanding of the appellate function and process. Ordinarily, an appellate court sits as a court of review. Its function is not to hear evidence and, based thereon, to make an original determination. Instead, it provides an opportunity to examine asserted error in the trial court which is of such a nature that the complaining party is entitled to a new trial or outright reversal or some modification of the judgment entered. It is not the function of the appellate court to serve as advocate for any party to an appeal.'"

A failure to adequately brief an issue results in abandonment or waiver of the issue. *State v Logsdon*, 304 Kan. 3, 29, 371 P.3d 836 (2016). We find Grubbs has waived or abandoned any claims for relief other than the return of his security deposit because of inadequate briefing. And, as noted, Grubbs' additional claims for relief fail on the merits as well.

III. *The district court did not err in dismissing Grubbs' claims against the KCC.*

In his petition for review, and on appeal, Grubbs raises a variety of tort, statutory, and constitutional claims against the KCC—breach of contract, perjury, racial harassment and discrimination, and violations of due process under the Fourteenth Amendment, the Privacy Act of 1974, CAN-SPAM ACT, and K.S.A. 50-6,107. The claims were not part of his administrative complaint, and Grubbs' brief on appeal does not provide any factual or legal authority or analysis of these claims within the KJRA. Grubbs may be entitled to file a civil action to pursue his claims against the KCC, but he must do so independently of the KJRA. See *Platt v. Kansas State University*, 305 Kan. 122, 130-31, 379 P.3d 362 (2016); *Heiland v. Dunnick*, 270 Kan. 663, 668, 19 P.3d 103 (2001); *Lindenman v. Umscheid*, 255 Kan. 610, 619-20, 875 P.2d 964 (1994). The KJRA is not designed to be

the forum for the resolution of tort claims for wrongful acts or constitutional claims against an administrative agency. In other words, if Grubbs wishes to pursue his claims against the KCC, he may pursue them in an independent civil action.

Finally, we note that even if the KJRA were an appropriate forum for Grubbs' various tort, statutory, and constitutional claims, those claims were not made before the KCC, and no evidence supporting the claims is found within the administrative record. Grubbs' claims would thus fail on the merits.

Grubbs' claim for return of his security deposit is moot, and he has waived or abandoned his arguments of consequential damage because his appellate brief does not properly or adequately brief the legal and factual issues. And even if we were to consider Grubbs' extravagant damage claims, the administrative record contains no evidence or factual support for any damages beyond the $395 security deposit.

Affirmed.