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IN THE SUPREME COURT OF TEXAS

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NO. 18-0531

CARLOS ANTONIO RAYMOND	§	
v.	§	**Bexar County,**
MARTIN JOSEPH ROY AND PIZZA VENTURE OF SAN ANTONIO, LLC D/B/A PAPA JOHN'S PIZZA	§	**4th District.**

October 5, 2018

Petitioner's petition for review, filed herein in the above numbered and styled case, having been duly considered, is ordered, and hereby is, denied.

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I, BLAKE A. HAWTHORNE, Clerk of the Supreme Court of Texas, do hereby certify that the above is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appear of record in the minutes of said Court under the date shown.

WITNESS my hand and seal of the Supreme Court of Texas, at the City of Austin, this the 5th day of February, 2019.

Blake A. Hawthorne

Blake A. Hawthorne, Clerk

By Monica Zamarripa, Deputy Clerk

FILE COPY

RE: Case No. 18-0531 DATE: 10/5/2018
COA #: 04-17-00061-CV TC#: 2015CV00935
STYLE: RAYMOND v. ROY AND PIZZA VENTURE OF SAN ANTONIO, LLC

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. Petitioner's Motion to Supplement Record and Petitioner's Motion for Default Judgment are denied.

MR. CARLOS ANTONIO RAYMOND

* DELIVERED VIA E-MAIL *

Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00061-CV

Carlos Antonio **RAYMOND**,
Appellant

v.

PIZZA VENTURE OF SAN ANTONIO, LLC d/b/a Papa John's Pizza,
Appellee

From the County Court at Law No. 10, Bexar County, Texas
Trial Court No. 2015CV00935
Honorable David J. Rodriguez, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Rebeca C. Martinez, Justice

Delivered and Filed: May 23, 2018

AFFIRMED

This appeal arises from an automobile accident. After a jury trial, the trial court rendered a take-nothing judgment in favor of appellee Pizza Venture of San Antonio, LLC d/b/a Papa John's Pizza ("Pizza Venture").[1] On appeal, appellant Carlos Antonio Raymond raises several issues challenging the take-nothing judgment in favor of Pizza Venture. We affirm the trial court's judgment.

[1] The trial court rendered judgment against Martin Joseph Roy, another defendant in the matter, in the amount of $2,232.13. Roy did not file a notice of appeal contesting the portion of the judgment rendered against him.

BACKGROUND

A detailed rendition of the facts is unnecessary to our disposition of the appeal. Accordingly, we provide only a brief factual and procedural background for context.

A Ford Taurus driven by Martin Joseph Roy rear-ended a Hummer driven by Raymond. At the time of the collision, Roy was on his way to his job as a delivery driver for a local Papa John's Pizza owned by Pizza Venture. Raymond sued Roy and Pizza Venture, claiming Roy was in the course and scope of his employment at the time of the collision.

At trial, Raymond introduced evidence that at the time of the collision, Roy was wearing a Papa John's shirt and cap. Raymond testified that at the time of the accident, Roy repeatedly stated he was running late for work. Pizza Venture introduced evidence showing Roy had not yet "clocked-in" for work at the time of the accident.

After the testimony was concluded, the matter was submitted to the jury. The jury found Roy negligent, but found he was not in the course and scope of his employment at the time of the collision. The jury declined to award Raymond any damages for physical pain, mental anguish, or medical expenses. It also declined to award any damages for repairs to Raymond's vehicle. Based on the jury's verdict, the trial court rendered a take-nothing judgment in favor of Pizza Venture. As to Roy, the trial court rendered a judgment in favor of Raymond, awarding him $2,232.13 — the amount of the uncontested property damage. Thereafter, Raymond perfected this appeal.

ANALYSIS

On appeal, Raymond, who is pro se, sets out four issues in his brief. Raymond first complains about the trial court's failure to provide the jury with a "missing evidence inference charge," seemingly arguing he was entitled to such an instruction based on Pizza Venture's alleged failure to call certain witnesses or introduce certain evidence. Raymond next contends Pizza

Venture should have introduced evidence of insurance coverage for its drivers, and because it did not, the trial court erred "in denying relief to correct a fault." This issue seems to be related to the first issue. Raymond then asserts he was denied his procedural due process rights, but the argument under that issue relates back to allegedly missing evidence, specifically certain photographs, and the trial court's failure to instruct the jury that the failure of Pizza Venture to produce the photographs required the jury to presume they would have been unfavorable to Pizza Venture. Finally, he contends he was improperly denied his right to recover damages pursuant to 42 U.S.C. § 1983. Again, however, his argument does not comport with his stated issue. Within the argument, he seems to argue the trial court rendered judgment contrary to the jury's verdict based on a motion to enter judgment filed by Pizza Venture.

Before we substantively address any of Raymond's issues, we must first determine whether he has presented or preserved anything for our review. In its brief, Pizza Venture contends Raymond has waived his issues because: (1) he has failed to sufficiently brief them; and (2) he failed to preserve any of the issues raised here by proper request or objection in the trial court. We agree.

Waiver — Inadequate Briefing

When Raymond filed his original appellant's brief, this court rendered an order striking his brief. In our order, we noted Raymond's brief failed to contain any citations to the appellate record or authorities, failed to present legal arguments, and failed to include a certificate of compliance. *See* TEX. R. APP. P. 9.4(i)(3) (requiring computer-generated documents subject to word limits to include certificate stating number of words in document); *id.* R. 38.1(i) (requiring appellant's brief to contain clear and concise argument with appropriate citations to record and authorities). Accordingly, we struck Raymond's brief and ordered him to file an amended brief correcting the violations set out in the order. After the amended brief was filed, we rendered another order stating

that although Raymond failed in his amended brief to "meet all of the applicable rules for an appellate brief," the amended brief was sufficient to avoid being struck in its entirety.

As set out in our prior order, Rule 38.1(i) of the Texas Rules of Appellate Procedure specifically states that an appellant's brief must contain clear and concise arguments with appropriate citations to authorities *and to the appellate record.* TEX. R. APP. P. 38.1(i) (emphasis added). The record in this case includes three volumes of the clerk's record totaling 262 pages. In his brief, Raymond provides a single citation to the clerk's record, specifically "2CR4," which he cites twelve times for numerous statements. The clerk's records filed in this appeal are designated as the original clerk's record and two supplemental clerk's records. We cannot determine whether the single citation provided by Raymond to the clerk's record refers to the first supplemental record (the first supplemental being the second of three volumes) or the second supplemental clerk's record. In either case, located at page four in the first supplemental record is Pizza Venture's motion to enter judgment, which does not support the numerous statements for which it is cited. If Raymond is referring to the second supplemental clerk's record, on page four of that volume, we find what this court construed as Raymond's notice of appeal, which also fails to support the contentions for which that citation is relied upon within the brief.

The record also includes four volumes of the reporter's record with approximately 251 pages of testimony and argument, and 253 pages of exhibits. As for the reporter's record, Raymond provides a single citation to the reporter's record specifically "2RR123" or simply "123" eight times. That page of the reporter's record contains a portion of Pizza Venture's cross-examination of Raymond. The testimony concerns Roy's alleged speed at the time of the collision, whether Roy stopped at the time of the accident or left and returned, and Raymond's attempt to keep Roy at the scene until police arrived. Just as with the clerk's record, it is not relevant to the propositions for which it is cited.

After a full review of the brief, we hold Raymond's brief contains conclusory statements unsupported by proper citations to the record. The Texas Supreme Court has specifically held that "[t]he Texas Rules of Appellate Procedure require adequate briefing." *ERI Consulting Eng'rs, Inc. v. Swinnea*, 318 S.W.3d 867, 880 (Tex. 2010); *see also Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284–85 (Tex. 1994) (holding appellate court has discretion to deem issues waived due to inadequate briefing). Failure to satisfy the briefing requirements of Rule 38.1(i) waives the issue on appeal. *In re Estate of Valdez*, 406 S.W.3d 228, 235 (Tex. App.—San Antonio 2013, pet. denied).

Numerous appellate courts, including this court, have held issues were waived in cases where the appellant failed to provide proper citations to the appellate record in the brief. *See, e.g., Rangel v. Tex. Workforce Comm'n*, No. 04-17-00081-CV, 2017 WL 4413432, at *2 (Tex. App.—San Antonio Oct. 4, 2017, no pet.) (mem. op.); *Torres v. Garcia*, No. 04–11–00822–CV, 2012 WL 3808593, at *3 (Tex. App.—San Antonio Aug. 31, 2012, no pet.) (mem. op.); *Gann v. Anheuser–Busch, Inc.*, 394 S.W.3d 83, 87–88 (Tex. App.—El Paso 2012, no pet.); *Meachum v. JP Morgan Chase Bank, N.A.*, No. 05–08–00318–CV, 2011 WL 477885, at *2 (Tex. App.—Dallas Feb. 11, 2011, pet. denied) (mem. op.); *Stephens v. Dolcefino*, 126 S.W.3d 120, 129–30 (Tex. App.—Houston [1st Dist.] 2003), *pet. denied,* 181 S.W.3d 741 (Tex. 2006); *Trebesch v. Morris*, 118 S.W.3d 822, 825 (Tex. App.—Fort Worth 2003, pet. denied).

In *Torres v. Garcia*, this court was faced with an appeal from a summary judgment in which appellant failed to provide any record citations within his discussion of an issue. 2012 WL 3808593, at *3. We held we were within our authority to hold the issue was waived due to inadequate briefing. *Id.* This court reached the same conclusion in *Niera v. Frost Nat'l Bank*, No. 04–09–00224–CV, 2010 WL 816191, at *3 (Tex. App.—San Antonio Mar. 10, 2010, pet. denied) (mem. op.).

As an appellate court, it is not our duty to perform an independent review of the record for evidence supporting an appellant's position. *See Priddy v. Rawson*, 282 S.W.3d 588, 595 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). Rather, the duty rests with the appellant to cite to the record to support his arguments. *See Dunn v. Bank–Tec South*, 134 S.W.3d 315, 327 (Tex. App.—Amarillo 2003, no pet.). Were we to undertake this task, we would be abandoning our role as neutral adjudicators, becoming an advocate for the appellant. *Plummer v. Reeves*, 93 S.W.3d 930, 931 (Tex. App.—Amarillo 2003, pet. denied). As stated by this court in *Blake v. Intco Invs. of Tex., Inc.*, "[a]s an appellate court, we are not required to search the record ... without more specific guidance." 123 S.W.3d 521, 525 (Tex. App.—San Antonio 2003, no pet.) (citing *Hall v. Stephenson*, 919 S.W.2d 454, 467 (Tex. App.—Fort Worth 1996, writ denied)).

Accordingly, we agree with Pizza Venture that Raymond has waived his complaints due to inadequate briefing. Raymond failed to provide "appropriate citations" to the record, and it is not our duty to find record support for his contentions. *See Priddy*, 282 S.W.3d at 595.

We recognize Raymond is representing himself on appeal, i.e., is appearing pro se. However, pro se litigants are generally held to the same standards as licensed attorneys and must comply with all applicable rules, including the rules governing appellate briefs. *See e.g., Serrano v. Pellicano Park, L.L.C.*, 441 S.W.3d 517, 520 (Tex. App.—El Paso 2014, pet. dism'd w.o.j.); *Kindle v. United Servs. Auto. Ass'n*, 357 S.W.3d 377, 380 (Tex. App.—Texarkana 2011, pet. denied); *Strange v. Cont'l Cas. Co.*, 126 S.W.3d 676, 677–78 (Tex. App.—Dallas 2004, pet. denied). As the supreme court stated in *Mansfield State Bank v. Cohn*:

> There cannot be two sets of procedural rules, one for litigants with counsel and the other for litigants representing themselves. Litigants who represent themselves must comply with the applicable procedural rules, or else they would be given an unfair advantage over litigants represented by counsel.

573 S.W.2d 181, 184–85 (Tex. 1978); *see Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005) (stating pro se litigants are not exempt from rules of procedure and that "[h]aving two sets of rules—a strict set for attorneys and a lenient set for pro se parties—might encourage litigants to discard their valuable right to the advice and assistance of counsel").

Waiver — Failure to Preserve Error

After reviewing Raymond's brief, despite his stated issues, it appears he has two basic complaints: (1) the trial court erred in failing to instruct the jury that Pizza Venture's failure to call certain witnesses or introduce certain evidence entitled the jury to presume such evidence would have been unfavorable to Pizza Venture; and (2) the trial court erred in rendering judgment contrary to the jury's verdict based on a motion to enter judgment filed by Pizza Venture. We hold Raymond failed to preserve either complaint for our review.

With regard to the jury instruction, the supreme court has held that a party objecting to a jury charge "must point out distinctly the objectionable matter and the grounds of the objection." *Ford Motor Co. v. Ledesma*, 242 S.W.3d 32, 43 (Tex. 2007) (quoting TEX. R. CIV. P. 274); *see Marin Real Estate Partners v. Vogt*, 373 S.W.3d 57, 90 (Tex. App.—San Antonio 2011, no pet.). Moreover, the failure to submit an instruction will not be deemed a ground for reversal unless a substantially correct instruction has been requested in writing and tendered by the complaining party. *Id.* (citing *State Dep't of Highways & Pub. Transp. v. Payne*, 838 S.W.2d 235, 241 (Tex. 1992)); *Wheelbarger v. Landing Council of Co-Owners*, 471 S.W.3d 875, 897 (Tex. App.—Houston [1st Dist.] 2015, pet. denied) (citing TEX. R. CIV. P. 278). Failure to object timely to error in a jury charge constitutes waiver of that error. *Wheelbarger*, 471 S.W.3d at 897 (citing TEX. R. CIV. P. 272).

In this case, when the trial court presented its charge to all counsel for review and objections, Raymond's counsel affirmatively stated he had no objections to the court's jury charge.

There is nothing in the record to suggest Raymond requested the instruction complained of on appeal or tendered to the trial court in writing a substantially correct version of the instruction he now contends should have been given. Accordingly, Raymond has failed to preserve his jury instruction complaint for appellate review. *See Ledesma*, 242 S.W.3d at 43; *Wheelbarger*, 471 S.W.3d at 897.

Raymond also complains about the trial court's rendition of judgment based on Pizza Venture's motion to enter judgment. In that motion, Pizza Venture also asked the jury to disregard the jury's answer of "$0" with regard to property damage to Raymond's vehicle because it was uncontested that his vehicle suffered damages in the amount of $2,232.13. Thus, any error in rendering judgment in accordance with Pizza Venture's motion benefitted Raymond. But for Pizza Venture's request, it is possible Raymond would not have been awarded any damages in this matter. Moreover, and as it relates to preservation, the record does not show any objection by Raymond with regard to Pizza Venture's motion. Thus, any complaint regarding Pizza Venture's motion for entry of judgment and to disregard the jury's finding of "$0" damages has been waived. *See* TEX. R. APP. P. 33.1(a) (stating that as prerequisite to presenting complaint for appellate review, record must show complaint was made to trial court by timely request, objection, or motion, and trial court rules on request, objection, or motion); *see also MAN Engines & Components v. Shows*, 434 S.W.3d 132, 141 n.38 (Tex. 2014) (citing TEX. R. APP. P. 33.1(a) and holding that to preserve error, appellant should have raised cross-point on independent ground for granting JNOV).

CONCLUSION

Based on the foregoing, we hold Raymond has waived his appellate complaints due to inadequate briefing and failure to preserve error. Because he has waived his complaints, we need not substantively address them. Accordingly, we affirm the trial court's judgment.

Marialyn Barnard, Justice

Fourth Court of Appeals
San Antonio, Texas

JUDGMENT

No. 04-17-00061-CV

Carlos Antonio **RAYMOND**,
Appellant

v.

PIZZA VENTURE OF SAN ANTONIO, LLC d/b/a Papa John's Pizza,
Appellee

From the County Court at Law No. 10, Bexar County, Texas
Trial Court No. 2015CV00935
Honorable David J. Rodriguez, Judge Presiding

BEFORE JUSTICE ANGELINI, JUSTICE BARNARD, AND JUSTICE MARTINEZ

In accordance with this court's opinion of this date, the trial court's judgment is AFFIRMED.

We order that appellee Pizza Venture of San Antonio, LLC d/b/a Papa John's Pizza recover its appellate costs from appellant Carlos Antonio Raymond.

SIGNED May 23, 2018.

Marialyn Barnard
Marialyn Barnard, Justice