

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 27, 2019

Elisabeth A. Shumaker
Clerk of Court

HARRY BERES,

Petitioner - Appellee,

v.

No. 18-1430

WILBANKS SECURITIES, INC.,

Respondent - Appellant.

ORDER

This matter is before the court following review of the appellant's fourth attempt at filing a compliant brief and appendix. For the reasons stated below, this appeal is dismissed for failure to prosecute. 10th Cir. R. 42.1.

The appellant's brief and appendix were originally due December 18, 2018. No brief or appendix was filed, so the court issued a deficiency letter to the appellant on December 27, 2018. The court *sua sponte* granted the appellant an extension of time until January 7, 2019, to file a brief and appendix.

On January 7, 2019, an opening brief was filed. The court reviewed the brief and found it deficient. The list of deficiencies with brief alone spanned nearly two pages of our January 10, 2019 letter. The appellant failed to file an appendix at all. The court again *sua sponte* granted the appellant another extension of time to file a compliant brief and appendix until January 22, 2019.

The appellant filed an amended brief and an appendix on January 22, 2019. The court cited both documents as deficient by letter dated January 28, 2019. The brief was still missing copies of the order(s) and judgment being appealed. The court identified eight significant deficiencies with both versions (electronic and hard copy) of the appendix. The court *sua sponte* granted a third extension of time to file a brief and appendix that comply with our rules until February 7, 2019.

On February 7, 2019, a second amended brief and an amended appendix were filed. For a second time, the brief did not include the required attachments. And the amended appendix did not resolve all of the deficiencies identified in our January 28, 2019 deficiency notice. The amended appendix also had new deficiencies. The court entered an order granting the appellant another opportunity to file a compliant opening brief and appendix, with the deadline being February 15, 2019. Our order warned that failure to file a brief and appendix in compliance with the rules could result in dismissal for failure to prosecute, citing Tenth Circuit Rule 42.1.

The appellant filed a third amended opening brief and a second amended appendix on February 15, 2019. The court reviewed the documents and found them both deficient. On February 20, 2019, a second order was entered describing the deficiencies in the third amended brief and second amended appendix and granting the appellant until February 25, 2019, to correct all deficiencies. This order also warned of possible dismissal for failing to cure all deficiencies pursuant to Tenth Circuit Rule 42.1.

On February 25, 2019, the appellant filed a fourth amended brief and a third amended appendix. Neither fully complies with the rules. Although the order being

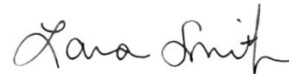
appealed is attached to the brief this time, the district court's judgment is not.

Additionally, unlike prior versions of the brief, the electronic version of the fourth amended brief is scanned and not searchable. Similarly, the electronic version of the third amended appendix is also scanned and not searchable. The third amended appendix also contains no bookmarks.

Given the volume of court resources that have been expended on the appellant, the lengthy delay between the original due date and today, and the warnings issued about the possible consequences for failing to comply with our rules, the court has determined that the appellant has failed to prosecute this appeal and dismissal is warranted. 10th Cir. R. 42.1. No motion to reinstate this appeal will be considered absent submission of a fully compliant – both electronic and hard copy – opening brief and appendix before or simultaneously with any motion to reinstate. *Id.* 42.2.

A copy of this order shall stand as and for the mandate.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script that reads "Lara Smith".

by: Lara Smith
Counsel to the Clerk