

Affirmed and Opinion filed September 14, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00577-CV

HERIBERTO URRUTIA AND EFRAIN PEREZ, Appellants

V.

KYSOR INDUSTRIAL CORPORATION, Appellee

**On Appeal from the 61st District Court
Harris County, Texas
Trial Court Cause No. 95-39101**

OPINION

Heriberto Urrutia (Urrutia) and Efrain Perez (Perez) appeal from a take-nothing judgment in their products liability suit against Kysor Industrial Corporation (Kysor) for personal injuries incurred when a fuel tank manufactured by Kysor ruptured in an automobile accident. Urrutia and Perez appear *pro se* and present four points of error. We affirm.

Perez was driving a Ford F-700 truck that was equipped with a fuel tank manufactured by Kysor. Urrutia was sitting on the passenger side of the truck. Appellants were driving west when they were struck by an eastbound car driven by Sal Cook. The fuel tank ruptured causing a fire that injured Perez and Urrutia. Appellants sued Kysor claiming the fuel tank was

defectively designed, and their negligence caused appellants' injuries. Ford Motor Company settled with appellants, and appellants' claim against Kysor was tried by a jury. The jury found the fuel tank had no design defect in it that was a producing cause of appellants' injuries. The jury also found that Kysor's negligence, if any, did not proximately cause appellants' injuries.

Appellants filed a motion for new trial claiming the verdict of the jury was against the great weight and preponderance of the evidence (factual insufficiency). Appellants attorney for this appeal, George Bishop, withdrew and the appellants continued the appeal and filed their own briefs *pro se*. Mr. Bishop stated in his motion to withdraw that he "was of the opinion that a legitimate appeal could not be successfully taken from the judgment."

Although the Texas Supreme Court has disapproved affirming a judgment because of briefing deficiencies, *Inpetco, Inc. v. Texas Am. Bank*, 729 S.W.2d 300, 300 (Tex.1987) (per curiam), this Court nonetheless has some discretion to choose between deeming a point waived and allowing amendment or rebriefing. *Fredonia State Bank, Executor Et Al. vs. General Am. Life Ins. Co.*, 881 S.W.2d 279, 284 (Tex.1994); *see also Valdez v. Aldrich*, 892 S.W.2d 95, 96 (Tex.App.-Houston[14th Dist.] 1994. no writ); *King v. Graham Holding, Co.*, 762 S.W.2d 296, 298 (Tex.App.--Houston [14th Dist.] 1988, no writ).

It is well settled that pro se litigants are held to the same standards as licensed attorneys and that they must comply with all applicable laws and rules of procedure. *Greenstreet v. Heiskell*, 940 S.W.2d 831, 834 (Tex.App.--Amarillo 1997, no writ), *reh'g denied*, 960 S.W.2d 713 (per curiam). The rationale for the rule is that if pro se litigants were not required to comply with applicable procedural rules, they would be given an unfair advantage over litigants represented by counsel. *Id.* at 835.

Appellants' initial brief in this matter failed to substantially comply with Rule 38, Texas Rules of Appellate Procedure, particularly as to providing a clear and concise argument of his contentions on appeal with appropriate citations to authorities and the record, and appellants thereafter were allowed to file their supplemental brief. We have reviewed the supplemental brief filed by appellants, and find that it, too, fails to substantially comply with Rule 38 and

fails to provide a clear and concise argument of appellants' contentions on appeal with appropriate citations to authorities and the record.

Appellants' points of error are:

Point of Error One. The trial court erred in rendering judgment in favor of defendant, Kysor, because, as a matter of law, one of the defendants was served and was not called to appear in court to testify, that is Sal Cook. He was alive and reachable. The Plaintiffs reached him. See Return Receipt Requested attached.

Point of Error Two. The trial court erred in rendering judgment against plaintiffs, Urrutia and Perez, because there was more than sufficient credible evidence submitted to support the two plaintiffs.

Point of Error Three. The trial court erred in rendering judgment against plaintiffs, Urrutia and Perez, because Marcos Galvan, a rider in the middle of the Ford F-700 truck at the time of the accident. See his affidavit.

Point of Error Four. The trial court erred in rendering judgment against plaintiffs, Urrutia and Perez, accepting the jury's decision based on false evidence submitted expert witnesses for the defendant.

In the next ten pages of their brief, appellants summarize the testimony of various witnesses as they see it. Next follows a "summary of argument" and "argument." Nowhere in appellants' initial brief, reply brief, or supplemental brief, do they furnish a clear and concise argument of their contentions on appeal with appropriate citations to authorities and the record required by rule 38, Texas Rules of Appellate Procedure. Without legal argument and supportive authority, we have nothing to review. *See Valdez*, 892 S.W.2d at 96. It is not this Court's duty to review the record, research the law and fashion a legal argument for appellants when they have failed to do so. We overrule appellants points of error one, two, three, and four.

We affirm the judgment of the trial court.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed September 14, 2000.

Panel consists of Justices Sears, Cannon, and Draughn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Bill Cannon, and Joe L. Draughn sitting by assignment.