

SUPREME COURT OF ARKANSAS

Helena Country Club v. Brocato

2017 Ark. 152 (2017) · No. CV-16-697 · Decided April 27, 2017

SUMMARY

The Arkansas Supreme Court considered an interlocutory appeal from the disqualification of Helena Country Club’s attorney, Charles E. Halpert, Jr., in litigation involving pool-maintenance services and claims for breach of contract and violation of the Arkansas Deceptive Trade Practices Act. The court held that it could not reach the merits because the record lacked a transcript of the contested telephone hearing underlying the disqualification order. The case was remanded to settle the record, with instructions concerning a supplemental record and substituted briefs.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Courtney Hudson Goodson; Josephine Linker Hart; Wood; Womack
JURISDICTION	Arkansas
DECIDED	April 27, 2017
DOCKET	CV-16-697
DISPOSITION	remanded
PROCEDURAL POSTURE	Interlocutory appeal from an order disqualifying the appellant's attorney, Charles E. Halpert, Jr., based on the possibility that he would be called as a witness.
STANDARD OF REVIEW	Abuse of discretion. An abuse of discretion may be manifested by an erroneous interpretation of the law.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Helena Country Club v. Billy Ray Brocato d/b/a Splash Pool and Spa

TOPICS

- interlocutory appeal
- appellate procedure
- standard of review
- evidence
- commercial litigation

PRACTICE AREAS

- appellate procedure
- civil procedure
- legal ethics
- evidence
- commercial litigation

QUESTIONS PRESENTED

1. Whether the circuit court erred in determining that an alleged statement made during settlement negotiations could be used to call the Club's attorney as a witness.
2. Whether the circuit court erred in disqualifying the Club's attorney based on the possibility that opposing counsel would call him as a witness.
3. Whether the absence of a transcript of the contested telephone hearing prevented appellate review and required remand to settle the record.

HOLDINGS

1. The court could not reach the merits because the record did not reveal the arguments and evidence considered at the untranscribed contested hearing; the case was therefore remanded to settle the record.
2. When an opposing party seeks to call an attorney as a witness, disqualification requires proof that the attorney's testimony is material, the evidence is unobtainable elsewhere, and the testimony is or may be prejudicial to the client.

KEY QUOTATIONS

“Unless waived on the record by the parties, it shall be the duty of any circuit court to require that a verbatim record be made of all proceedings, including any communications between the court and one or more members of the jury, pertaining to any contested matter before the court or the jury.” (at 6)

“We therefore remand this case to settle the record in this matter.” (at 7)

FACTUAL BACKGROUND

Brocato provided pool maintenance and cleaning services to Helena Country Club under an alleged oral agreement and claimed that the Club failed to pay invoices totaling \$11,505.48. The Club denied liability, alleged that certain work was unauthorized, and asserted counterclaims for fraud and violation of the Arkansas Deceptive Trade Practices Act. A dispute arose over an alleged statement by the Club's attorney during a settlement-related telephone conversation, after which the circuit court disqualified the attorney without a transcript of the hearing.

PROCEDURAL HISTORY

Brocato sued Helena Country Club for breach of contract and violation of the Arkansas Deceptive Trade Practices Act, and the Club filed an answer and counterclaim. After the Club moved to exclude an alleged statement made during settlement discussions, the circuit court held an untranscribed telephone hearing and entered an order disqualifying Halpert. The Club filed a timely interlocutory appeal. The Supreme Court of Arkansas remanded to settle the record because the hearing was not transcribed and the court could not review the basis for the disqualification.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The case was remanded to settle the record. Brocato was ordered to file a certified supplemental record containing the necessary material within thirty days. After the supplemental record was lodged, Brocato was to file a substituted abstract, addendum, and brief within fifteen days; the Club could then file a responsive brief or rely on its existing brief.

CASES CITED

- Weigel v. Farmers Insurance Co., 356 Ark. 617, 158 S.W.3d 147 (2004)
- Craig v. Carrigo, 340 Ark. 624, 12 S.W.3d 229 (2000)
- Burnette v. Morgan, 303 Ark. 150, 794 S.W.2d 145 (1990)
- Wilburn v. State, 346 Ark. 137, 56 S.W.3d 365 (2001)
- Norman v. Norman, 333 Ark. 644, 970 S.W.2d 270 (1998)
- Robinson v. State, 353 Ark. 372, 108 S.W.3d 622 (2003)
- Williams v. State, 362 Ark. 416, 208 S.W.3d 761 (2005)
- George v. State, 356 Ark. 345, 151 S.W.3d 770 (2004)
- Thompson v. Guthrie, 373 Ark. 443, 284 S.W.3d 455 (2008)
- Valley v. Phillips County Election Commission, 357 Ark. 494, 183 S.W.3d 557 (2004)
- Floyd v. State, 2016 Ark. 264, 495 S.W.3d 82
- Saline Memorial Hospital v. Berry, 321 Ark. 588, 906 S.W.2d 297 (1995)