

SUPREME COURT OF ARKANSAS

Talbert v. U.S. Bank

266 S.W.3d 741, 371 Ark. 429 (2007) · No. No. 07-497 · Decided November 1, 2007

SUMMARY

The Arkansas Supreme Court ordered rebriefing in Debra Talbert's appeal from a summary-judgment order in favor of U.S. Bank. The court held that the appellant's brief failed to comply with Arkansas Supreme Court Rule 4-2(a)(5) because it did not properly abstract the relevant discussion from the summary-judgment hearing, and directed her to file a substituted brief within fifteen days.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	November 1, 2007
DOCKET	No. 07-497
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the Pulaski County Circuit Court's order granting U.S. Bank's motion for summary judgment. The Arkansas Supreme Court ordered rebriefing because the appellant's brief lacked a proper abstract.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Debra Talbert v. U.S. Bank

TOPICS

- appellate procedure
- civil procedure
- summary judgment

PRACTICE AREAS

- Appellate procedure
- Civil procedure

QUESTIONS PRESENTED

1. Whether the appellant's failure to provide a proper abstract of the relevant summary-judgment hearing required rebriefing under Arkansas Supreme Court Rule 4-2.

HOLDINGS

1. When an appellant's abstract is deficient and prevents the court from reaching the merits or causes unreasonable or unjust delay, the court may require the appellant to file a substituted abstract, Addendum, and brief within the prescribed time under Arkansas Supreme Court Rule 4-2(b)(3).

KEY QUOTATIONS

"If the Court finds the abstract or Addendum to be deficient such that the Court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the Court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has fifteen days within which to file a substituted abstract, Addendum, and brief, at his or her own expense, to conform to Rule 4-2(a)(5) and (8)." (266 S.W.3d at 741)

FACTUAL BACKGROUND

At a January 8, 2007 hearing, the parties discussed U.S. Bank's motion for summary judgment. One issue was whether U.S. Bank had waived its right to collect \$15,000 from Talbert by failing to place a permanent hold on her account. Talbert raised waiver as an appellate point but failed to abstract the portion of the hearing transcript addressing that issue.

PROCEDURAL HISTORY

The Pulaski County Circuit Court granted U.S. Bank's motion for summary judgment after a January 8, 2007 hearing addressing the motion and whether U.S. Bank waived its claim for \$15,000. On appeal, Talbert failed to abstract the relevant discussion from the hearing. The Supreme Court of Arkansas ordered Talbert to file a substituted abstract, Addendum, and brief within fifteen days, warning that failure to comply could result in affirmance for noncompliance.

DISPOSITION

other

REMAND INSTRUCTIONS

Talbert must abstract the entire transcript of the January 8, 2007 hearing and file a substituted brief within fifteen days from entry of the order. U.S. Bank may file a responsive brief within the time prescribed by the Supreme Court Clerk or rely on its previously filed brief.

OPINION

PER CURIAM.

266 S.W.3d 741 (2007) Debra TALBERT, Appellants, v. U.S. BANK, Appellee. No. 07-497. Supreme Court of Arkansas. November 1, 2007. Bradley J. Williams, for appellant. Herbert C. Rule, III, Little Rock, AR, for appellee. PER CURIAM. Appellant Debra Talbert appeals the

Pulaski County Circuit Court's order granting Appellee U.S. Bank's motion for summary judgment.

Because Appellant has submitted a brief without a proper abstract in violation of Ark. Sup.Ct. R. 4-2(a)(5), we order rebriefing. Rule 4-2(b)(3) explains the procedure to be followed when an appellant has failed to supply this court with a sufficient brief and states: Whether or not the appellee has called attention to deficiencies in the appellant's abstract or Addendum, the Court may address the question at any time.

If the Court finds the abstract or Addendum to be deficient such that the Court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the Court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has fifteen days within which to file a substituted abstract, Addendum, and brief, at his or her own expense, to conform to Rule 4-2(a)(5) and (8).

Mere modifications of the original brief by the appellant, as by interlineation, will not be accepted by the Clerk. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to revise or supplement the brief, at the expense of the appellant or the appellant's counsel, as the Court may direct. If after the opportunity to cure the deficiencies, the appellant fails to file a complying abstract, Addendum and brief within the prescribed time, the judgment or decree may be affirmed for noncompliance with the Rule.

Id. In the case at bar, a hearing was held on January 8, 2007, in which counsel for both parties discussed with the trial court the merits of Appellee's summary-judgment motion. Among the issues discussed was whether Appellee waived its right to collect an amount of \$15,000 from Appellant because it failed to place a permanent hold on her account. While Appellant argued Appellee's waiver of its claim for the \$15,000 as one of her points on appeal, Appellant failed to abstract the discussion of that issue, which occurred during the summary-judgment hearing below.

Here, as Appellant has failed to comply with this Rule, we order Appellant to properly abstract the entire transcript of the January 8 hearing and to file a substituted brief within fifteen days from the date of entry of this order. According to Rule 4-2(b)(3), if Appellant fails to file a complying brief within the prescribed time, the order appealed from may be affirmed for noncompliance with the Rule.

After service of the substituted brief, Appellee shall have an opportunity to file a responsive brief in the time prescribed by the Supreme Court Clerk, or to rely on the brief that it has previously filed in this appeal. Rebriefing ordered.