

SUPREME COURT OF ARKANSAS

Heard v. Regions Bank

253 S.W.3d 422 (Ark. 2007) · No. No. 06-1040 · Decided March 15, 2007

SUMMARY

The Supreme Court of Arkansas considered an appeal involving the denial of a continuance, approval of a guardianship final accounting, and closure of the guardianship matter. The court remanded the case to settle an incomplete record and ordered the appellant to supplement the Addendum with omitted pleadings and other relevant materials.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	March 15, 2007
DOCKET	No. 06-1040
DISPOSITION	remanded
PROCEDURAL POSTURE	Appeal from an order of the Garland County Circuit Court denying Heard's motion for continuance, approving Regions Bank's final guardianship accounting, and closing the guardianship matter.
STANDARD OF REVIEW	The court did not reach the merits because it reviewed the completeness of the appellate record and Addendum under Arkansas Rule of Appellate Procedure-Civil 6(e) and Arkansas Supreme Court Rule 4-2.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential on appellate-record and Addendum-compliance procedures.
PARTIES	Penney Heard v. Regions Bank

TOPICS

- appellate procedure
- guardianship procedure
- probate procedure
- civil procedure
- preservation of error

PRACTICE AREAS

- appellate procedure
- probate
- guardianships
- civil procedure

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed or decided when the record and Addendum omit pleadings material to the appellant's arguments.
2. Whether the appellate court should remand under Arkansas Rule of Appellate Procedure-Civil 6(e) to settle the record and require a substituted Addendum.

HOLDINGS

1. When the appellate record and Addendum omit material pleadings necessary to evaluate the appellant's arguments, the appellate court may sua sponte remand to the trial court to settle the record and require supplementation rather than dismissing the appeal immediately.
2. An Addendum must include the order appealed from and other relevant pleadings, documents, or exhibits essential to understanding the case and the appellate court's jurisdiction; failure to supplement may result in affirmance for noncompliance.

KEY QUOTATIONS

"It would be manifestly unjust for the appeal to be dismissed in these circumstances for such an omission without giving Heard an opportunity to supply the deficiency." (253 S.W.3d at 423)

"Remanded to settle the record; supplementation of the Addendum ordered." (253 S.W.3d at 424)

FACTUAL BACKGROUND

Heard was adjudicated incapacitated in 1998, and Regions Bank was appointed substitute guardian of her estate in 1999. The guardianship was terminated in May 2002, after which Regions filed a final accounting; Heard alleged fiduciary misconduct relating to investment fees, delayed dissolution of the estate, and failure to procure health insurance. In 2006, the circuit court denied her continuance, approved the accounting, and released Regions from further responsibility, but the appellate record omitted pleadings material to Heard's arguments.

PROCEDURAL HISTORY

Heard challenged Regions Bank's handling of her former guardianship estate and filed a motion for continuance. The Garland County Circuit Court denied the continuance, approved the final accounting, released Regions from further responsibility, and denied Heard's motion for relief under Arkansas Rule of Civil Procedure 60. On appeal, the Supreme Court of Arkansas determined that the appellate record and Addendum omitted material pleadings, including the district-court complaint and dismissal materials, and remanded for the record to be settled and the Addendum supplemented.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The case was remanded to the Garland County Circuit Court to settle the record. After completion of the record, Heard was ordered to file a substituted Addendum conforming to Arkansas Supreme Court Rule 4-2(a)(8) within fifteen days. Regions Bank was to be allowed to revise or supplement its brief. Failure to file the Addendum could result in affirmance for noncompliance.

CASES CITED

- West v. West, 362 Ark. 456, 208 S.W.3d 776 (2005) (per curiam)
- Davis v. Ralston Purina Co., 248 Ark. 14, 449 S.W.2d 709 (1970)

OPINION

PER CURIAM.

253 S.W.3d 422 (2007) Penney HEARD, Appellant, v. REGIONS BANK, Appellee. No. 06-1040. Supreme Court of Arkansas. March 15, 2007. Stephen P. Westerfield, Hot Springs, AR, for appellant. John T. Vines, Hot Springs National Park, AR, for appellee. PER CURIAM. This appeal arises from an order of the Garland County Circuit Court in favor of appellee, Regions Bank, denying a motion for continuance filed by appellant, Penney Heard.

The circuit court's order also approved a final accounting and closed Heard's guardianship matter. However, we are unable to evaluate her arguments because the record and Addendum are incomplete. *423 We therefore remand to the trial court to settle the record and order that Heard supplement the Addendum.

On August 13, 1998, by court order, Heard was determined to be an incapacitated person unable to care for herself or her affairs. On August 3, 1999, Regions Bank was appointed as the substitute guardian of Heard's estate. By an order dated August 4, 1999, Regions immediately took possession of funds located at Morgan Stanley, Dean Witter, and Mercantile Bank.

Several orders that authorized payment to Heard were entered between 1999 and 2002. On April 22, 2002, Heard petitioned to terminate the guardianship, attaching an affidavit of Dr. Kevin Hale, Heard's treating physician, who swore that Heard was capable of making responsible decisions regarding her personal care, as well as her personal and business affairs.

On May 7, 2002, the circuit court entered an order terminating guardianship and ordered Regions to pay the balance of a consumer loan made by Regions to Heard for the payment of home improvements. The court further ordered Regions to pay \$1,190 in attorneys' fees and to prepare and file a final accounting. Regions filed a final accounting on December 17, 2002.

Among the items is a "loss of sale of personal trust common stock" in the amount of \$14,382.31. On December 18, 2002, Heard filed a pro se response to Regions's final accounting, alleging "fiduciary misconduct" and requesting \$20,342.99.

On February 14, 2003, Heard filed a pro se motion for continuance, stating that she needed "a couple of months" because her attorney was called into active duty in the military. According to the facts presented by Heard and Regions, Heard filed a complaint against Regions on May 6, 2004, in the Hot Springs District Court. Regions responded, alleging that the complaint should have been filed within the probate estate.

The case was nonsuited. On April 7, 2006, Heard filed a petition with the probate division of the Garland County Circuit Court and an amended petition filed on May 10, 2006. In her amended petition, Heard alleged that Dean Witter, the previous guardian, opened investments at its business. When Regions was appointed as guardian, Regions cashed the investments at Dean Witter, incurred a substantial withdrawal fee, and reinvested the estate funds at Regions Bank.

In her petition, Heard alleged that (1) Regions's investment decision was self-serving and breached a fiduciary duty by subjecting the estate to fees of \$1,600; and (2) Regions failed to procure health insurance for Heard. Heard averred that Regions did not dissolve Heard's estate after the entry of the order on May 7, 2002, but rather held investments until June 11, 2002.

Heard claimed that, on May 7, 2002, the assets of the estate were worth \$26,220.10, and \$16,408.84 by June 11, 2002. Regions filed a response to petition, dated April 17, 2002, arguing that Heard filed a letter of response to the final accounting but never acted upon the allegations. Further, Regions claimed that the action was nonsuited and that Heard failed to provide any proof of fiduciary misconduct, fraud, or otherwise.

Regions requested that the circuit court approve the final accounting. On May 19, 2006, Heard also filed a motion for continuance. In its response, Regions argued that, pursuant to Ark.Code Ann. § 28-65-403 (Repl.2004), the final accounting should have been approved, as Heard failed to take action within three years of the filing of the final accounting.

The circuit court entered an order on May 23, 2006, denying Heard's motion for continuance, approving Regions's final accounting, and releasing Regions from any *424 further duty or responsibility in the matter. Heard filed a motion, pursuant to Ark. R. Civ. P. 60, seeking relief from the judgment. A response was filed on June 20, 2006.

The circuit court denied Rule 60 relief and entered an order on June 22, 2006. Heard filed a notice of appeal on June 22, 2006. From the May 23, 2006 order, Heard brings her appeal. Without regard to the merits of Heard's case, we must address deficiencies not only in the record on appeal but also in the Addendum. Rule 6(e) of the Arkansas Rules of Appellate Procedure-Civil in pertinent part states: If anything material to either party is omitted from the record by error or accident or is misstated therein,... the appellate court on proper suggestion, or on its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary, that a supplemental record be certified and transmitted.

Id. Pursuant to Rule 6(e), we can sua sponte direct the parties to supply any omitted material by filing a certified, supplemental record. See also *West v. West*, 362 Ark. 456, 208 S.W.3d 776 (2005) (per curiam). In the present case, neither the record nor the Addendum contain the pleadings from Heard's case in the district court, particularly Heard's complaint, Regions's answer, the district court's order granting dismissal, or any of the other pleadings considered by the circuit court in reaching its determination.

The pleadings are critical to her argument on appeal. Such omissions are routinely corrected either by stipulation of the parties or by action taken in the circuit court. *Davis v. Ralston Purina Co.*, 248 Ark. 14, 449 S.W.2d 709 (1970). It would be manifestly unjust for the appeal to be dismissed in these circumstances for such an omission without giving Heard an opportunity to supply the deficiency.

Therefore, pursuant to Ark. R.App. P.-Civil 6(e), we remand the case to the circuit court to settle the record. Further, because of Heard's omission in the record, she has failed to include "relevant pleadings" in violation of Arkansas Supreme Court Rule 4-2(a)(8), which provides that "an Addendum shall include true and legible photocopies of the order... from which the appeal is taken, along with any other relevant pleadings, documents, or exhibits essential to an understanding of the case and the Court's jurisdiction on appeal."

Ark. Sup.Ct. R. 4-2(a)(8) (2006). We may raise issues of deficiencies sua sponte. See Ark. Sup.Ct. R. 4-2(b)(3). Upon completion of the record, Heard shall have fifteen days to file a substituted Addendum to conform to Ark. Sup.Ct. R. 4-2(a)(8). See 4-2(b)(3). Regions shall then be afforded the opportunity to revise or supplement its brief. If Heard fails to file an Addendum within this time period, the circuit court's judgment may be affirmed for noncompliance with this rule.

See id. Remanded to settle the record; supplementation of the Addendum ordered.