

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)