

SUPREME COURT OF ARKANSAS

Brock v. Townsell

314 S.W.3d 271 (Ark. 2009) · No. No. 08-807 · Decided February 19, 2009

SUMMARY

The Supreme Court of Arkansas ordered rebriefing in an appeal from an order granting summary judgment to the mayor of Conway and denying the appellant's motion for summary judgment. The court held that the appellant's addendum was deficient under Arkansas Supreme Court Rule 4-2(a)(8) because it omitted essential pleadings and related summary-judgment materials, and allowed fifteen days to cure the deficiency.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	February 19, 2009
DOCKET	No. 08-807
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from a circuit court order granting the appellee's motion for summary judgment and denying the appellant's cross-motion for summary judgment.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Herman Brock v. Tab Townsell, Mayor of the City of Conway, Arkansas

TOPICS

- appellate procedure
- summary judgment
- civil procedure
- municipal law

PRACTICE AREAS

- appellate procedure
- civil procedure
- municipal law

QUESTIONS PRESENTED

1. Whether the appellant's failure to include pleadings and documents essential to understanding the case and the court's appellate jurisdiction required rebriefing under Arkansas Supreme Court Rule 4-2.

HOLDINGS

1. When an appellant's addendum is deficient because it omits relevant pleadings and documents essential to understanding the case and the court's jurisdiction on appeal, the Supreme Court may require the appellant to file a substituted addendum and brief within the period prescribed by Rule 4-2(b)(3).

KEY QUOTATIONS

“Because Appellant has submitted a brief without a proper addendum in violation of Arkansas Supreme Court Rule 4-2(a)(8) (2008), we order rebriefing.” (271)

“Because Appellant has failed to comply with our rules, we order him to file a substituted addendum and brief within fifteen days from the date of entry of this order.” (272)

FACTUAL BACKGROUND

The underlying case was decided in the circuit court on cross-motions for summary judgment. The appellant's addendum omitted both summary-judgment motions, the related responses and replies, supporting briefs, and the appellee's answer to the amended and substituted complaint. Because those omissions prevented adequate review of the case and the court's jurisdiction, the Supreme Court ordered the appellant to file a substituted addendum and brief.

PROCEDURAL HISTORY

The circuit court decided the case on cross-motions for summary judgment. On appeal, the Arkansas Supreme Court determined that the appellant's brief and addendum omitted pleadings and other documents required for an understanding of the case and the court's jurisdiction, and ordered rebriefing rather than reaching the merits.

DISPOSITION

other

REMAND INSTRUCTIONS

The appellant was ordered to file a substituted addendum and brief within fifteen days from entry of the order. After service, the appellee was permitted to revise or supplement the appellee's brief within the time prescribed by the clerk. Failure to comply could result in affirmance of the order appealed from for noncompliance with Rule 4-2.

OPINION

PER CURIAM.

314 S.W.3d 271 (2009) 2009 Ark. 81 Herman BROCK, Appellant, v. Tab TOWNSELL, Mayor of the City of Conway, Arkansas, Appellee. No. 08-807. Supreme Court of Arkansas. February 19, 2009. James F. Lane, Conway, for appellant. Michael L. Murphy, Conway City Att'y, and Kurt J. Meredith, Deputy City Att'y, Conway, for appellee. PER CURIAM. Appellant Herman Brock appeals from the circuit court's order granting Appellee Tab Townsell's motion for summary judgment and denying his own motion for summary judgment.

Because Appellant has submitted a brief without a proper addendum in violation of Arkansas Supreme Court Rule 4-2(a)(8) (2008), we order rebriefing. Rule 4-2(a)(8) provides, in pertinent part: Following the signature and certificate of service, the appellant's brief shall contain an Addendum which shall include true and legible photocopies of the order, judgment, decree, ruling, letter opinion, or Workers' Compensation Commission opinion 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). The procedure to be followed when an appellant has submitted an insufficient abstract or addendum is set forth in Arkansas Supreme Court Rule 4-2(b)(3): 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 *272 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.

Ark. Sup.Ct. R. 4-2(b)(3). Here, Appellant's brief is deficient due to the fact that his addendum lacks relevant pleadings essential to an understanding of the case. The record reveals that the case was decided by the circuit court upon cross motions for summary judgment.

However, the addendum fails to include both motions for summary judgment, the responses and replies thereto, and the briefs in support thereof. Appellee's answer to Appellant's amended and substituted complaint also does not appear in the addendum.

Because Appellant has failed to comply with our rules, we order him to file a substituted addendum and brief within fifteen days from the date of entry of this order. If Appellant fails to do so within the prescribed time, the order appealed from may be affirmed for noncompliance with Rule 4-2.

After service of the substituted addendum and brief, Appellee shall have an opportunity to revise or supplement his brief in the time prescribed by the clerk. Rebriefing ordered.