

SUPREME COURT OF ARKANSAS

Calaway v. Dickson

360 Ark. 463 (2005) (Ark. 2005) · No. No. 04-1091 · Decided January 31, 2005

SUMMARY

The Supreme Court of Arkansas ordered rebriefing in an appeal concerning the denial of Rule 11 sanctions. The court held that the appellant's abstract was deficient because it omitted the hearing transcript and improperly placed it in the addendum, and directed the appellant to file a compliant substituted brief within fifteen days.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	January 31, 2005
DOCKET	No. 04-1091
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the denial of appellant's motion for sanctions against appellee under Arkansas Rule of Civil Procedure 11.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Shane Calaway v. Barbara Dickson

TOPICS

- appellate procedure
- sanctions
- civil procedure
- preservation of error

PRACTICE AREAS

- civil procedure
- appellate procedure
- sanctions

QUESTIONS PRESENTED

- Whether the appellant's abstract and addendum complied with Arkansas Supreme Court Rule 4-2.
- What remedy was appropriate when briefing deficiencies prevented the Supreme Court from reaching the merits of the appeal.

HOLDINGS

1. An appellant must place the abstract of transcript testimony and court-counsel colloquies in the abstract and include the required orders and other essential materials in the addendum; placing the hearing transcript itself in the addendum does not satisfy the rule.
2. When an appellant's abstract or addendum is deficient such that the court cannot reach the merits, the court may allow the appellant fifteen days to file a substituted abstract, addendum, and brief; failure to cure may result in affirmance for noncompliance.

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 unreasonably 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).” (201 S.W.3d at 931-32)

FACTUAL BACKGROUND

Calaway sought sanctions against Dickson under Arkansas Rule of Civil Procedure 11. In appealing the denial of that motion, he failed to include a proper abstract of the hearing testimony and court-counsel colloquies. He instead improperly placed a copy of the hearing transcript in the addendum, leaving the appellate court unable to reach the merits on the existing briefing.

PROCEDURAL HISTORY

Calaway appealed the denial of his Rule 11 sanctions motion. The Supreme Court of Arkansas determined that the abstract and addendum did not properly present the transcript of the sanctions hearing and ordered appellant to file a substituted brief complying with the appellate briefing rules.

DISPOSITION

other

REMAND INSTRUCTIONS

Appellant must file, within fifteen days from entry of the order, a substituted brief containing an abstract of the hearing denying his Rule 11 sanctions motion. Mere modifications of the original brief will not be accepted. After service, appellee may file a responsive brief or rely on the previously filed brief.

OPINION

PER CURIAM.

201 S.W.3d 931 (2005) Shane CALAWAY, Appellant v. Barbara DICKSON, Appellee. No. 04-1091. Supreme Court of Arkansas. January 31, 2005. William C. Plouffe, Jr., El Dorado, for

appellant. Compton, Prewett, Thomas & Hickey, L.L.P., by: F. Mattison Thomas, Jr., El Dorado, for appellee. PER CURIAM. Appellant Shane Calaway appeals the denial of sanctions under Ark.

R. Civ. P. 11 (2004) against Appellee Barbara Dickson. This case was submitted for decision on January 27, 2005. Upon reviewing the materials included in Mr. Calaway's abstract and addendum, it is apparent that the hearing held on appellant's motion for sanctions is not abstracted in accordance with our rules. Instead, a copy of the transcript from the Rule 11 hearing is improperly included in the addendum.

Our rules clearly state that the addendum shall contain "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) (2004). The appellant's abstract of the transcript of testimony of witnesses and colloquies between the court and counsel should be included in the abstract. Ark. Sup.Ct. R. 4-2(a)(5). Supreme Court Rule 4-2(b)(3) explains the procedure to be followed when an appellant has failed to supply this court with a sufficient brief.

The rule provides: 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 unreasonably 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 *932 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.

Ark. R. Sup.Ct. 4-2(b)(3) (2004). We hereby order the appellant to submit a substituted brief that contains an abstract of the hearing denying his motion for Rule 11 sanctions. Appellant is directed to file the substituted brief within fifteen days from the entry of this order. Mere modifications of the original brief will not be accepted. See Ark. Sup.Ct. R. 4-2(b)(3).

According to Rule 4-2(b)(3), if appellant fails to file a complying abstract and addendum within the prescribed time, the judgment or decree may be affirmed for noncompliance with the Rule. After service of the substituted brief on the appellee, the appellee shall have an opportunity to file

a responsive brief in the time prescribed by the Supreme Court Clerk, or to rely on the appellee's brief previously filed in this appeal.

Rebriefing ordered.