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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 10-1149

PATRICIA HRUSKA APPELLANT	**Opinion Delivered** June 1, 2011
V.	APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION
BAXTER REGIONAL MEDICAL CENTER, RISK MANAGEMENT RESOURCES, DEATH & PERMANENT TOTAL DISABILITY TRUST FUND, and SECOND INJURY FUND APPELLEES	[NO. F400618 & F209377] REBRIEFING ORDERED

WAYMOND M. BROWN, Judge

This is an appeal from the Workers' Compensation Commission. In such cases, attorneys often include the entire record in their briefs out of an abundance of caution to ensure that we have everything necessary to decide the appeal. Though this is sometimes a violation of our briefing rules, we reach the merits because the violation is not so flagrant as to interfere with our review of the case. The brief before us in this appeal, however, crosses the line into what can only be described as a callous disregard for our rules. We order rebriefing.

Ordinarily, when it comes to violations of our briefing rules, the problem is the absence of documents or testimony necessary for us to confirm our jurisdiction, to understand

the case, or to decide the issues on appeal. While the appellate courts sometimes exercised a relaxed standard for minor violations in the past, citing the ability to go to the record to affirm in appropriate cases,[1] we have become more vigilant in the enforcement of the briefing rules. To this end, we wrote in *Ridenoure v. Ball*:[2]

> [W]hen concurring with our supreme court's per curiam *In re Arkansas Supreme Court and Court of Appeals Rules 4-1, 4-2, 4-3, 4-4, 4-7, and 6-9*, Justice Danielson wrote, "Without predictable and consistent enforcement, a rule, no matter how clear, will not be consistently followed. I am hopeful that the amendments to the rule are not the only change and that enforcement is made a high priority."[3] Even before promulgating the new rules, our supreme court established a preference toward rebriefing when deficiencies were present. In *Roberts v. Roberts*, our supreme court recognized:
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> > While it may cause additional delay and expense to the appellant, this court does not order rebriefing either thoughtlessly or needlessly. To the contrary, we do so *only* after considered thought, analysis, and examination of both the briefs and record on appeal. We do so, not to waste the time of counsel or the money of litigants, but to ensure that we can achieve the utmost of judicial economy and efficiency in deciding the appeals and, more importantly, to ensure that every litigant before this court receives the justice he or she seeks and deserves. For that reason, this court, as well as the court of appeals, should, and must, be consistent in our application of our rules to *every case and every litigant*, and both courts must enforce those rules in a consistent fashion to achieve the order and predictability that the appellate process requires.[4]

Here, we are faced with the opposite problem: a brief that contains too much. Our

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[1] *See, e.g.*, *Allen v. Allison*, 356 Ark. 403, 155 S.W.3d 682 (2004); *Advocat, Inc. v. Sauer*, 353 Ark. 29, 111 S.W.3d 346 (2003); *Hosey v. Burgess*, 319 Ark. 183, 890 S.W.2d 262 (1995).

[2] 2010 Ark. App. 572, at 1–2.

[3] 2009 Ark. 534, at 10–11 (Danielson, J., concurring).

[4] 2009 Ark. 306, at 3–4 n.2, 319 S.W.3d 234, 236 n.2 (per curiam); *see also, e.g.*, *Bryan v. City of Cotter*, 2009 Ark. 172, 303 S.W.3d 64.

rules instruct, "The addendum shall not merely reproduce the entire record of trial court filings."[5] Further, we have stated that excessive abstracting is as much of a violation of the rules as omissions of key materials.[6] We often forgive an excessive abstract and addendum because it does not interfere with our consideration of the appeal. The brief presented by counsel here presents that rare exception.

Before the ALJ and the Commission, appellant's counsel argued that the entire workers' compensation scheme was unconstitutional. (We have already rejected this argument several times.[7]) He abandons these arguments on appeal. Nonetheless, about two-thirds of counsel's abstract (88 of 122 pages) and half of his addendum (418 of 849 pages) are devoted to his constitutional challenge. Many of the 418 pages in the addendum are actually four pages of pleadings or deposition transcripts condensed to one page. Making it even worse, much of this unnecessary material consists of transcripts. Our rules explicitly instruct that "if a transcript (stenographically reported material) of a hearing, deposition, or testimony is an exhibit to a

[5] Ark. Sup. Ct. R. 4-2(a)(8).

[6] *See, e.g.*, *St. Paul Fire & Marine Ins. Co. v. Brady*, 319 Ark. 301, 891 S.W.2d 351 (1995); *Forrest City Machine Works, Inc. v. Mosbacher*, 312 Ark. 578, 851 S.W.2d 443 (1993); *Forrest Const., Inc. v. Milam*, 70 Ark. App. 466, 20 S.W.3d 440 (2000); *Schwarz v. Moody*, 55 Ark. App. 6, 928 S.W.2d 800 (1996).

[7] *See, e.g.*, *Murphy v. Forsgren, Inc.*, 99 Ark. App. 223, 258 S.W.3d 794 (2007); *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007); *see also McFarland v. EZ Loader Boat Trailer*, CA 06-1104 (Ark. App. Sept. 5, 2007) (unpublished).

motion or related paper, then the material parts of the transcript shall be abstracted, *not included in the addendum*."[8]

In his brief, counsel writes as follows regarding the inclusion of this unnecessary material:

> The issue of the constitutionality or lack thereof of the Workers' Compensation Act is not before the Court as this was not presented to the Full Commission.[9] However, in previous filings of briefs, we have had to reconstruct the Appellant's Brief because the Court required abstracting all testimony pending before the Commission.

We are unaware of any instance where we have directed rebriefing for the inclusion of something that is so clearly unnecessary for the disposition of an appeal. The amount of irrelevant material in counsel's brief is unacceptable.

Counsel's flagrant violation of our rules interferes with our ability to efficiently address the issues in this appeal. To this end, we order counsel to file a substituted brief that complies with our rules within fifteen days from the date of entry of this opinion.[10] Before filing the substituted brief, we encourage him to review the rules and to ensure that no other deficiencies are present. After service of the substituted brief, Baxter Regional Medical Center shall have an opportunity to revise or supplement its brief in the time prescribed by the court.

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[8] Ark. Sup. Ct. R. 4-2(a)(8)(A)(i) (emphasis added).

[9] Counsel's constitutional arguments were before the Commission. In his notice of appeal from the ALJ, counsel stated that he appealed from and disagreed with the ALJ's findings regarding the constitutionality of the Workers' Compensation Act.

[10] Ark. Sup. Ct. R. 4-2(b)(3), (c)(2) (allowing parties who file a deficient brief an opportunity to file a conforming brief).

If counsel fails to file a compliant brief within the prescribed time, we may affirm the Commission's decision for noncompliance with our rules.[11]

Rebriefing ordered.

ROBBINS and MARTIN, JJ., agree.

[11] *See* Ark. Sup. Ct. R. 4-2(b)(3).