

Cite as 2017 Ark. App. 686
ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-17-200

JOHN ADAMS AND MARIE ADAMS
APPELLANTS

V.

BILL MOODY

APPELLEE

Opinion Delivered: December 13, 2017

APPEAL FROM THE BAXTER
COUNTY CIRCUIT COURT
[NO. 03CV-05-383]

HONORABLE GORDON WEBB,
JUDGE

REBRIEFING ORDERED

BART F. VIRDEN, Judge

Appellants John and Marie Adams appeal from the Baxter County Circuit Court's order finding them in contempt for violating a previous order instructing them to comply with restrictive covenants and ordering them to pay \$5,000 in damages to appellee Bill Moody, along with attorney's fees and costs in the amount of \$7,710. The trial court also found that there was insufficient evidence on which to find in favor of the Adamses on their counterclaim. The Adamses argue that the trial court erred in its decision. Because of deficiencies in the Adamses' abstract, brief, and addendum, we order rebriefing.

I. *Procedural History*

This case began with a complaint filed by Moody in December 2005 against his neighbors, the Adamses, for breach of restrictive covenants. An order was entered on April 21, 2008, finding the Adamses in violation of the restrictive covenants and ordering them

to comply with restrictive covenants by removing one structure and debris within a certain time frame and by finishing all the structures on their property and bringing them into full compliance with the restrictive covenants within a certain time frame. The Adamses appealed to this court from the April 2008 order, and it was affirmed on June 17, 2009. *Adams v. Moody*, 2009 Ark. App. 474, 324 S.W.3d 348.

Subsequently, Moody filed numerous petitions for contempt, and the trial court found the Adamses in contempt on multiple occasions. After having granted numerous continuances, the trial court finally held a hearing and issued its December 7, 2016 order granting Moody's most recent motion for contempt for continued noncompliance with the April 2008 order. The trial court ordered the Adamses to bring their structures into full compliance by June 1, 2017, and ordered them to pay \$5,000 in damages and \$7,710 in attorney's fees and costs by June 1, 2017. The trial court denied the Adamses' "Counter Complaint," in which they alleged that Moody himself had violated the restrictive covenants. The Adamses timely appealed from this order, but we cannot reach the merits at this time due to briefing deficiencies.

I. *Briefing Deficiencies*

A. Abstract

Arkansas Supreme Court Rule 4-2(a)(5) provides that the appellant shall create an abstract of the material parts of all the transcripts in the record. Information in a transcript is material if the information is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal. Ark. Sup. Ct. R. 4-2(a)(5). The

abstract shall be an impartial condensation, without comment or emphasis, of the transcript. Ark. Sup. Ct. R. 4-2(a)(5)(B). The abstract must not reproduce the transcript verbatim. *Id.* In abstracting testimony, the first person (“I”), rather than the third person (“He” or “She”), shall be used. *Id.* The question-and-answer format shall not be used. *Id.* In a second or subsequent appeal, material information from all transcripts filed in any prior appeal must be abstracted. Ark. Sup. Ct. R. 4-2(a)(5)(C).

Although there are 152 pages of testimony in the record, the Adamses included “excerpts” comprising four full pages. The Adamses abstracted only testimony that they believed was favorable to them and completely omitted Moody’s thirty-three pages of testimony. The abstract is also in question-and-answer format, which is not permitted.

B. Statement of the Case

The appellant’s brief shall contain a concise statement of the case without argument. Ark. Sup. Ct. R. 4-2(a)(6). The Adamses’ statement of the case is argumentative. They state, for example, “A timeframe was wrongly set by the Trial Court,” “Defendants were in substantial compliance as to the restrictive covenants,” and “The Trial Court . . . ignored their evidence of numerous surgeries, accidents (while working on their property), a family death, and other medical conditions that kept them from timely complying with the Court’s Orders.”

C. Addendum

The addendum shall include, among other things, the pleadings on which the trial court decided each issue: complaint, answer, counterclaim, reply to counterclaim, cross-

claim, answer to cross-claim, third-party complaint, and answer to third-party complaint; all motions (including posttrial and postjudgment motions), responses, replies, exhibits, and related briefs, concerning the order, judgment, or ruling challenged on appeal. Ark. Sup. Ct. R. 4-2(a)(8)(A)(i).

The Adamses omit necessary documents from the addendum. The addendum begins with a motion for contempt filed by Moody, which references an order from which the Adamses should be held in contempt for violating. That December 20, 2012 order is not included in the addendum. In the trial court's "Order and Judgment," there is a recapitulation of the history of the case, mentioning several petitions and orders. If any of those documents are essential to our understanding of the case or would help this court decide the issues on appeal, they should be included. Also, the Adamses filed a "Counter Complaint" against Moody. Their counterclaim is included in the addendum, but they did not include Moody's answer.

II. *Conclusion*

We order the Adamses to file a substituted abstract, brief, and addendum that complies with Ark. Sup. Ct. R. 4-2 within fifteen days of the date of this opinion. Ark. Sup. Ct. R. 4-2(b)(3). Failure to file a complying brief within that time may result in the judgment being affirmed for noncompliance with the rules. *Id.* While the deficiencies listed above are the most glaring, the Adamses should not consider them to be a definitive list; we strongly recommend that the Adamses review Rule 4-2 before submitting their substituted brief.

Rebriefing ordered.

GRUBER, C.J., and HARRISON, J., agree.

John P. Adams and Anne Marie Adams, pro se appellants.

Sanders, Morgan & Clarke PLLC, by: *Roger L. Morgan and Robert S. Clarke*, for appellee.