

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-17-150

WILLIAM K. MCDANIEL, JR.

APPELLANT

V.

JUDITH H. MCDANIEL

APPELLEE

Opinion Delivered: April 25, 2018

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTEENTH DIVISION
[NO. 60DR-11-3907]

HONORABLE MACKIE M. PIERCE,
JUDGE

REMANDED TO SUPPLEMENT THE
RECORD; REBRIEFING ORDERED

MIKE MURPHY, Judge

This is a pro se appeal from an amended decree of divorce that the Pulaski County Circuit Court entered on October 18, 2016, that granted Judith H. McDaniel's counterclaim for divorce against her estranged husband, William K. McDaniel, Jr. The decree followed several years of litigation that were dominated by an ongoing discovery dispute involving the parties' substantial assets. The complexity of the dispute warranted the appointment of a special master, who found that William had engaged in a pattern of conduct to thwart Judith's discovery of his assets and his income. The circuit court adopted the special master's factual findings and imposed sanctions under Ark. R. Civ. P. 37(b)(2), including dismissing William's complaint for divorce and precluding him from

introducing any witnesses or exhibits at the trial. The circuit court later found that William's conduct throughout the litigation also warranted an unequal division of the marital assets in the final decree.

On appeal, William alleges that the circuit court abused its discretion by imposing severe sanctions based on William's failure to comply with discovery; by failing to continue a December 12, 2012, hearing at which William could not appear; by holding William in contempt; by setting child support and alimony without sufficient evidence; and by unequally dividing the marital assets in the final decree. Because the abstract, addendum, and record are deficient in several respects, we must remand to supplement the record and order rebriefing.

Arkansas Supreme Court Rule 4-2(a)(5) (2017) requires an appellant to "create an abstract of the material parts of all the transcripts (stenographically reported material) in the record." The rule also provides that the abstract "shall be an impartial condensation" of the transcript, and "[n]o more than one page of a transcript shall be abstracted without giving a record page reference." Ark. R. Sup. Ct. 4-2(a)(B). "The question and answer format," moreover, "shall not be used." *Id.* Additionally, Arkansas Supreme Court Rule 4-2(a)(8) requires an appellant's brief to include an addendum that "contain[s] true and correct legible copies of the non-transcript documents in the record on appeal that are essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal." Because William's abstract and addendum fail to comply with these rules, we must order him to rebrief the case.

Our review indicates that William's abstract does not offer an impartial condensation of the record, as it appears that he fails to include portions of the transcript that are not beneficial to his case. He also presents the abstract in question-and-answer format in violation of Ark. R. Sup. Ct. 4-2(a)(B), and several pages of testimony are summarized without appropriate references to the record. The addendum, moreover, contains transcribed material—apparently a portion of a hearing before the special master—in violation of Ark. R. Sup. Ct. 4-2(a)(8). The addendum also omits several documents that Judith filed in the case—including her counterclaim for divorce—as well as the last of the five notices of appeal that William filed below.

Finally, documents that may be relevant to the issues on appeal, including a motion to compel that Judith filed on April 26, 2012, and an order compelling discovery that the circuit court entered on June 20, 2012, are not in the record. Accordingly, we remand this case to supplement the record to include these documents. The revised addendum, of course, should also include these documents.

William has thirty days from the date of this opinion to file a supplemental record that includes the motion to compel filed on April 26, 2012, and the order compelling discovery entered on June 20, 2012. After the supplemental record is filed with this court, William will be given fifteen days to file a substituted brief, abstract, and addendum that complies with our rules. Judith may revise or supplement her brief within fifteen days of the filing of William's substituted brief or may rely on her previously filed brief. Ark. R. Sup. Ct. 4-2(b)(3). The deficiencies we have noted are not to be taken as an exhaustive list.

We strongly encourage William to review the rules and to ensure that no other deficiencies exist beyond those identified here.

Remanded to supplement the record; rebriefing ordered.

WHITEAKER and HIXSON, JJ., agree.

William K. McDaniel, pro se appellant.

Mann & Kemp, PLLC, by: *Angela Mann*, for appellee.