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ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-17-511

MARCUS TOWNSEND

APPELLANT

V.

DORIAN T'YA TOWNSEND

APPELLEE

Opinion Delivered: January 31, 2018

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, THIRD
DIVISION
[NO. 60DR-16-971]

HONORABLE CATHLEEN V.
COMPTON, JUDGE

REMANDED TO SETTLE AND
SUPPLEMENT THE RECORD;
REBRIEFING ORDERED

MIKE MURPHY, Judge

This is a one-brief appeal. In it, appellant Marcus Townsend appeals a Pulaski County Circuit Court order modifying a custody determination registered here but made by a Hawaiian court. On appeal, Marcus argues that we should dismiss the case because the summons was defective; and thus, the circuit court did not have personal jurisdiction over him. He argues that, in the alternative, the circuit court did not have jurisdiction to modify the decree under the Uniform Child Custody Jurisdiction and Enforcement Act. Because essential documents are missing from our record, we remand to settle the record and order supplementation of the record and rebriefing.

On March 10, 2016, appellee Dorian Townsend petitioned the Pulaski County Circuit Court to register a divorce decree from the state of Hawaii. The decree divorced her from her then husband, Marcus, and among other things, awarded her custody of the parties' three minor children, set child support, and set a visitation schedule. At all times during this case, Dorian and the children lived in Arkansas, and Marcus lived in Hawaii. Dorian's counsel mailed a copy of the summons, petition, and exhibits to Marcus by certified mail with return receipt and restricted delivery, and Marcus received them on March 29, 2016. Dorian's counsel filed proof of service on April 26, 2016.

Marcus never responded, and an order was entered June 8, 2016, registering the decree. On June 17, 2016, Dorian filed a motion for contempt alleging that contrary to the decree, Marcus was not allowing her to contact the children while they were in Marcus's care. On June 30, 2016, Dorian filed a motion to modify visitation to allow her to communicate with her children at least once a day while the children are with their father, alleging discord between the parents as the material change. Marcus did not respond to either of these motions.

A hearing was held on January 5, 2017. Dorian was represented by counsel, and Marcus appeared in person, pro se. He specifically stated he was there by special appearance. After the hearing, the circuit court modified the decree regarding both visitation and the access each parent would have to medical documentation while the children were in the custody of the other parent.

On appeal, Marcus's first argument is that the circuit court did not have jurisdiction over him because the summons was defective insofar as it incorrectly stated he had twenty days to respond and not thirty as required under Arkansas Rule of Civil Procedure 4(b). However, the document Marcus points to in his argument is the notice for the registration of the divorce decree, and not a summons. Even so, the record does contain an affidavit of service from a personal-process server averring that Marcus was served by "delivering a true copy of the SUMMONS; VERIFIED PETITION FOR CONTEMPT CITATION; NOTICE OF HEARING; MOTION TO MODIFY VISITATION; to: MARCUS LASHUN TOWNSEND" on September 28, 2016.

Because the summons is necessary to address Marcus's first point on appeal, we remand to settle and supplement the record with a copy of any summons that may have issued with the petition for contempt or motion to modify visitation.

Arkansas Supreme Court Rule 4-2(a)(8) requires that the addendum to appellant's brief include all documents that are essential for the appellate court to understand the case and to decide the issues on appeal. Additionally, if anything material is omitted from the record by error or accident, we may direct that the omission be corrected and, if necessary, that a supplemental record be certified and transmitted. Ark. R. App. P.-Civ. 6(e). Because of the deficiency in the record as outlined above, we remand to the circuit court to settle and supplement the record with the necessary document within thirty days of this opinion. Upon filing of the supplemental record, Marcus shall then have fifteen days in which to

file a substituted abstract, addendum, and brief. *See* Ark. Sup. Ct. R. 4-2(b)(3). Dorian may then file a brief within fifteen days of the filing of Marcus's brief.

Remanded to settle and supplement the record; rebriefing ordered.

VIRDEN and KLAPPENBACH, JJ., agree.

Robert S. Tschiemer, for appellant.

One brief only.