

Cite as 2018 Ark. App. 58  
**ARKANSAS COURT OF APPEALS**  
DIVISION IV  
No. CV-17-556

SHAWN HARRIS

APPELLANT

V.

JAMES PARRISH

APPELLEE

OPINION DELIVERED: January 31, 2018

APPEAL FROM THE POPE  
COUNTY CIRCUIT COURT  
[NO. 58CV-15-109]

HONORABLE RUSSELL ROGERS,  
JUDGE

REBRIEFING ORDERED

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**ROBERT J. GLADWIN, Judge**

Appellant Shawn Harris appeals the March 31, 2017 order of the Pope County Circuit Court denying his motion for summary judgment on the basis of qualified immunity. Because appellant has submitted a brief without a proper abstract and addendum, in violation of Arkansas Supreme Court Rule 4-2 of the, we order rebriefing.

Rule 4-2(a)(5) provides that an appellant's abstract or abridgment of the transcript should consist of an impartial condensation, without comment or emphasis, of the material parts of the testimony of the witnesses and colloquies between the trial court, counsel, and other parties as are necessary to an understanding of all the questions presented to this court on appeal. The rule also provides that depositions shall be abstracted in a similar fashion.

The procedure to be followed when an appellant has submitted an insufficient abstract or addendum is set forth in Rule 4-2(b)(3):

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 unreasonable 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). 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. Sup. Ct. R. 4-2(b)(3).

The arguments to the trial court at the hearing on appellant's motion for summary judgment are not contained in the abstract. The transcript makes up the entirety of the fifth volume of the record, and counsel's arguments and the trial court's remarks are relevant and necessary to the appeal. The summary-judgment order entered by the trial court specifically states that "[t]he court heard argument of counsel and viewed the video of the altercation which formed the basis of this suit (Defendants' Exhibit "C"; Motion for Summary Judgment). After having viewed the evidence, read and considered the briefs[,] and listened to and considered argument of counsel, the court finds as follows: . . ." While appellant's written motion and brief for summary judgment, as well as appellee's response and accompanying brief, are in the addendum, we are unable to ascertain from the briefs

what was argued at the hearing or what other information, if any, was provided to and considered by the trial court.

Moreover, the abstract does not contain a complete copy of the transcript of appellee's criminal trial, which was attached as an exhibit to appellant's summary-judgment motion—it is missing several pages. And although the parties did abstract portions of the testimony from that trial, they abstracted close to 200 pages down to approximately twelve and a half pages. Appellant's testimony is only partially abstracted—his testimony starts on page 98 of the record and concludes on page 152. Although appellant's counsel submits that pages 127-52 are not abstracted because that portion is not relevant, we disagree. Potentially relevant testimony includes, but is not limited to (1) whether Mr. Parrish threatened appellant either physically or verbally; (2) the extent of appellant's physical contact with Mr. Parrish; (3) the discussion of audio portions of the video to which, apparently, the trial court at the hearing on the motion for summary judgment did not have access to (two videotapes of the altercation were made, but only the one made by Officer Jamie Gray had audio); (4) whether appellant cursed at Mr. Parrish and whether Mr. Parrish used foul language; (5) appellant's knowledge of Mr. Parrish's physical limitations; and (6) appellant's opinion as to the basis for the underlying charges against appellant.

We order appellant to submit a substituted abstract correcting the above-referenced deficiencies within 15 days from the date of this order. We encourage appellant to review Arkansas Supreme Court Rule 4-2 to ensure that the substituted abstract complies with the

rules and that no additional deficiencies are present. After service of the substituted abstract, brief, and addendum, Mr. Parrish shall have an opportunity to revise or supplement his brief in the time prescribed by the clerk or to rely on the brief that he previously filed in this appeal.

Rebriefing ordered.

WHITEAKER and BROWN, JJ., agree.

C. *Burt Newell*, for appellant.

*Murphy, Thompson, Arnold, Skinner & Castleberry*, by: Tom Thompson and Kenneth P. “Casey” Castleberry; and *Sutter & Gillham, PLLC*, by: *Luther Oneal Sutter*, for appellee.