

Cite as 2018 Ark. App. 593
ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-18-344

DELMAR MANAGEMENT, INC.

APPELLANT

V.

GEORGE MACKEY, ARKANSAS
DIRECT AUTO, LLC, D/B/A
ARKANSAS DIRECT AUTO SALES, AND
JOSHUA WHITE

APPELLEES

Opinion Delivered: December 5, 2018

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. 23CV-13-873]

HONORABLE CHRIS CARNAHAN,
JUDGE

REMANDED FOR
SUPPLEMENTATION OF THE
RECORD; REBRIEFING ORDERED

DAVID M. GLOVER, Judge

Appellant Delmar Management, Inc. (Delmar) appeals the Faulkner County Circuit Court's denial of its request for attorney's fees after receiving a \$15,000 award of compensatory damages from a jury. Delmar asserts it is entitled to a mandatory attorney's fee under Arkansas Code Annotated section 16-118-107 (Repl. 2016). We are unable to reach the merits of Delmar's claim due to deficiencies in its record, addendum, and abstract. We therefore remand for supplementation of the record and order rebriefing.

Delmar filed an abbreviated record on appeal. It designated only the complaint, the order striking appellee George Mackey's answer, the jury verdict, the judgment denying

attorney's fees, and transcripts of hearings conducted on May 2, 2017, and January 19, 2018.

First, it is unclear whether this is a final order for purposes of appeal. While the initial complaint is part of the record, Delmar failed to designate the amended complaint and answers thereto as part of the record. While Mackey attempted to supplement the addendum with the amended complaint, this is insufficient, as the amended complaint is not a part of the designated abbreviated record. Furthermore, the docket sheet in the record reflects summonses were issued to Joshua White and Arkansas Direct Auto, LLC, d/b/a Arkansas Direct Auto Sales after an amended complaint was filed, and those parties were named defendants on the order granting sanctions in the form of striking the answer, but there is no indication if or how these parties were disposed of during the case. We are unable to determine what actions were taken as to these parties, if any, or if all claims have been addressed or there are issues remaining to be adjudicated.

Additionally, the motion that is the basis for this appeal—the motion for attorney's fees—is not included in the record; the testimony from the jury trial is not included in the record nor is it abstracted; and the jury instructions are not included in either the record or the addendum.¹ Without this information, we are unable to determine on what basis

¹Mackey also included a document entitled “Plaintiff's Proposed Jury Instructions” in his supplemental addendum, but as discussed above, this is insufficient because the instructions were not designated as part of the record. Furthermore, it is unclear whether these jury instructions were merely proposed or were the jury instructions given at trial.

the jury awarded compensatory damages, which is necessary to answer the question on appeal—is appellant entitled to an award of attorney’s fees?

Rule 6(c) of the Arkansas Rules of Appellate Procedure–Civil (2017) provides, in pertinent part, “Where parties in good faith abbreviate the record by agreement or without objection from opposing parties, the appellate court shall not affirm or dismiss the appeal on account of any deficiency in the record without notice to appellant and reasonable opportunity to supply the deficiency.” *See also Young v. Smith*, 2012 Ark. App. 340. There is no indication Mackey objected to the abbreviated record. Pursuant to Rule 6, since the docket sheet in the record indicates there were other parties involved in this lawsuit, we allow Delmar the opportunity, within twenty-one days of this date, to supplement the record so that we may determine whether the judgment appealed from is final. *Young, supra Edgin v. Cent. United Life Ins. Co.*, 2012 Ark. App. 216.

Delmar shall file a substituted abstract, brief, and addendum that includes the additional material within fifteen days after the supplemental record is filed, in keeping with the requirements of Arkansas Supreme Court Rule 4-2 (2017). The addendum contained in the filed brief must contain all relevant documents essential to the understanding of the case and this court’s jurisdiction on appeal. *See Ark. Sup. Ct. R. 4-2(a)(8)*. Further, the abstract shall contain all material parts of information recorded in a transcript that 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)*. Mackey may file a substituted response brief within fifteen days after Delmar’s brief is filed, or he may rely on

his former brief. Delmar's reply brief, if any, will be due fifteen days after Mackey files his brief. Delmar is strongly encouraged to review our rules prior to filing the substituted abstract, brief, and addendum to ensure that no additional deficiencies are present. Failure to file an abstract, addendum, and brief in compliance with our rules within the time provided above may result in affirmance for noncompliance. Ark. Sup. Ct. R. 4-2(b)(3).

Remanded for supplementation of the record; rebriefing ordered.

HARRISON and KLAPPENBACH, JJ., agree.

Sutter & Gillham, P.L.L.C., by: *Luther Oneal Sutter* and *Lucien Gillham*, for appellant.

Porter Law Firm, by: *Austin Porter Jr.*, for separate appellee George Mackey.