

Cite as 2020 Ark. App. 85
ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-18-786

TYROME HURST, SPECIAL
ADMINISTRATOR OF THE ESTATE
OF DESHUN LAMONT HURST

APPELLANT

V.

RICELAND FOODS, INC.

APPELLEE

Opinion Delivered February 5, 2020

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. 18CV-16-630]

HONORABLE PAMELA HONEYCUTT,
JUDGE

REMANDED FOR SUPPLEMENATION
OF THE RECORD; REBRIEFING
ORDERED

LARRY D. VAUGHT, Judge

Tyrome Hurst, special administrator of the estate of Deshun Lamont Hurst, appeals the Crittenden County Circuit Court’s grant of summary judgment in favor of appellee Riceland Foods, Inc.¹ Appellant sued Riceland Foods and other defendants following a fatal accident in which the vehicle in which Deshun was riding collided with a truck transporting rice for appellee, killing Deshun. Because we cannot adequately assess our jurisdiction from the contents of appellant’s abbreviated record on appeal, we must remand this case for supplementation of the record and for rebriefing.

The current appeal was taken on an abbreviated record pursuant to Rule 6(c) of the Arkansas Rule of Appellate Procedure–Civil (2019). Rather than designating the entire

¹David Palmer, Hurlee Palmer, and Travis Coleman are no longer parties.

record, the appellant's notice of appeal designates only specific pleadings, motions, exhibits, and orders. Unfortunately, we cannot determine from this abbreviated record whether appellant is appealing from a final order. Specifically, we lack necessary information as to the disposition of Riceland Foods's third-party complaint against Alexandria Cannon.

In its appellee's brief, Riceland Foods states that "Riceland moved to dismiss Danny Kennedy and Roger Pohlner and brought Alexandria Cannon into the lawsuit by third-party complaint." Its motion for summary judgment and the circuit court's order granting summary judgment show Cannon as a third-party defendant. However, our record and our addendum on appeal do not contain a third-party complaint against Cannon. Our record and addendum also lack evidence regarding whether she was served or appeared, and we have found no order dismissing her from the case.

Pursuant to *Bulsara v. Watkins*, dismissal of a defendant does not resolve that defendant's third-party complaint against another party. 2010 Ark. 453, at 3. Therefore, although the court's order granting summary judgment to Riceland Foods on all of Hurst's claims against it states that the order resolves and dismisses all proceedings, it does not resolve or dismiss Riceland Foods's third-party claim against Cannon. Moreover, named but unserved defendants do not bar finality, and a defendant's appearance in the case may waive service, *Hall v. Bd. of Admin. of Willow Cove Horizontal Prop. Regime*, 2012 Ark. App. 677, at 3, so unanswered questions remain in this case regarding whether Cannon was served, appeared, or was dismissed.

Pursuant to Arkansas Rule of Appellate Procedure—Civil 6(c), we shall not affirm or dismiss a case on the basis of an abbreviated record if the record was abbreviated in good faith either by agreement or without objection from the appellee. Appellee has not objected

to the abbreviated record. In light of Rule 6, recognizing that this action involves both multiple parties and claims, we allow appellant the opportunity, within twenty-one days from this date, to supplement the record so that we can determine whether the judgment appealed from is final. *See Thomas v. Avant*, 369 Ark. 211, 252 S.W.3d 135 (2007); *Edgin v. Cent. United Life Ins. Co.*, 2012 Ark. App. 216, at 3–4. The supplemental record shall include all claims for relief and all orders disposing of any party to, or any claim presented in, this proceeding. We strongly encourage counsel, prior to filing the supplemental addendum, to review our rules as well as the addendum to ensure that no additional deficiencies are present.

Appellant will then be required to file a substituted abstract, brief, and addendum that includes the additional pleadings and orders within fifteen days after the supplemental record is filed in keeping with the requirements of our rules. The addendum contained in the filed brief must contain all relevant documents that are essential to an understanding of the case and this court’s jurisdiction on appeal. *See Ark. Sup. Ct. R. 4-2(a)(8); Harrill & Sutter, PLLC v. Farrar*, 2011 Ark. 181; *Bulsara*, 2010 Ark. 453. Appellee may file a substituted response brief within fifteen days after appellant’s brief is filed or it may rely on its former brief. Appellant’s reply brief, if any, will be due fifteen days after appellee files its brief.

Remanded for supplementation of the record; rebriefing ordered.

KLAPPENBACH and HIXSON, JJ., agree.

Halliburton & Ledbetter, by: *Mark Ledbetter*, for appellant.

Deacon Law Firm, P.A., by: *J. Barrett Deacon* and *Lauren O. Baber*, for appellee.