

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 09-921

TERRY DRUYVESTEIN
APPELLANT

V.

SUMMIT BROKERAGE SERVICES,
INC., AND LOIS DRUYVESTEIN
APPELLEES

Opinion Delivered April 7, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. CIV-07-1383]

HONORABLE JAMES O. COX,
JUDGE

REBRIEFING ORDERED

COURTNEY HUDSON HENRY, Judge

Appellant Terry Druyvestein appeals the order entered by the Circuit Court of Sebastian County dismissing his complaint for the creation of a constructive trust. For reversal, he contends that the trial court erred by not imposing a constructive trust. We order rebriefing due to deficiencies in appellant's addendum.

The record reflects that H.J. "Humpy" Druyvestein had two accounts with Summit Brokerage Services, Inc. In January 2004, he executed documents designating appellant, his nephew, as the beneficiary of one account and designating his wife, appellee Lois Druyvestein, as the beneficiary of the other account. In July 2004, Humpy purportedly removed appellant as the beneficiary of the one account and changed the beneficiary of that account to Lois. Humpy died in 2007.

In October 2007, appellant filed suit against Lois and Summit Brokerage Services, Inc., seeking to impose a constructive trust in the account, based on allegations that Humpy intended appellant to be the beneficiary of the account and that the change in beneficiary was executed by mistake.¹ After a hearing, the trial court issued a lengthy letter opinion outlining its decision to deny appellant's request to impose a constructive trust. The court later entered an order incorporating the letter opinion. This appeal followed.

Appellant argues that he presented clear and convincing evidence that the change in beneficiary was made by mistake. We are not able to reach the merits of appellant's argument at this time because appellant's addendum is incomplete. Rule 4-2(a)(8) of the Rules of the Arkansas Supreme Court and Court of Appeals provides that an appellant's addendum shall include, among other things, photocopies of the trial court's letter opinion.² Appellant has omitted from the addendum the trial court's seven-page letter opinion announcing its decision in this case. Thus, appellant's addendum is deficient. We also note that appellant's addendum does not include a letter written by witness Michael Hill to Lois on August 28, 2007. It would be helpful for the addendum to include this exhibit as well because Lois references it throughout her brief. We order appellant to file a substituted brief, abstract, and

¹ The record reflects that appellant voluntarily dismissed with prejudice his claim against Summit Brokerage Services, Inc.

² Effective January 1, 2010, a revised version of Rule 4-2 went into effect. *In re Arkansas Supreme Court and Court of Appeals Rules 4-1, 4-2, 4-3, 4-4, 4-7 and 6-9*, 2009 Ark. 544. Appellant filed his brief before the new rule became effective, but both the former and revised rule require letter opinions to be included in the addendum.

Cite as 2010 Ark. App. 300

addendum curing these omissions within fifteen days from the date of this opinion. Appellees shall have the choice to file a revised brief in the time scheduled by the clerk, or they may stand on the brief already submitted.

Rebriefing ordered.

HART and ROBBINS, JJ., agree.