

Cite as 2010 Ark. App. 366 (supp. opinion)

ARKANSAS COURT OF APPEALS

DIVISIONS I and II

No. CA09-887

JUANITA P. BOOTH, INDIVIDUALLY
AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF PATRICK BOOTH
APPELLANTS

V.

RIVERSIDE MARINE
REMANUFACTURERS, INC.
APPELLEE

Opinion Delivered JUNE 16, 2010APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CV 03-9863]

HONORABLE TIM FOX, JUDGE

SUPPLEMENTAL OPINION UPON
DENIAL OF REHEARING**DAVID M. GLOVER, Judge**

On April 28, 2010, we handed down an opinion in this case that affirmed the circuit court in all respects. *Booth v. Riverside Marine Remfgs., Inc.*, 2010 Ark. App. 366, ___ S.W.3d ___. One of the points on appeal was the circuit court's decision to award appellee approximately \$41,000 in attorney's fees. This issue is the subject of the petition for rehearing. We deny rehearing but issue this supplemental opinion to address appellants' argument on rehearing.

On appeal, appellants argued that appellee was not entitled to any attorney's fees for work performed on the two prior appeals in this case or for work prior to the second appeal. We held that the argument was not preserved for review because it had not been presented

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to the circuit court. 2010 Ark. App. 366 at 13, ___ S.W.3d at ___. In their petition for rehearing, appellants assert that their argument was presented to the circuit court in their brief in support of their response to appellee's motion for fees. This brief was, as appellants acknowledge, not included in their addendum. Nevertheless, appellants argue that we should review their argument on the attorney's fee issue on the merits because the brief was not *required* to be included in the addendum by the version of Supreme Court Rule 4-2(a)(8)(A) that was in effect at the time appellants filed their brief.¹ We must decline the invitation.

It is the appellants' burden to bring up a record sufficient to demonstrate error. *Judkins v. Duvall*, 97 Ark. App. 260, 248 S.W.3d 492 (2007). With the exception of materials included in the addendum, the record on appeal is confined to that which is abstracted. *Huddleston v. State*, 339 Ark. 266, 273, 5 S.W.3d 46, 50-51 (1999). We will not examine the transcript of a trial to reverse a circuit court, although we will do so to affirm. *Greene v. Pack*, 343 Ark. 97, 32 S.W.3d 482 (2000). Although Rule 4-2(a)(8) may not have required appellants to include their brief in the addendum, there was nothing preventing them from doing so. Moreover, including the brief in the addendum would have facilitated our understanding of the issue and enabled us to see that the issue had been properly preserved.

Rehearing denied.

VAUGHT, C.J., GLADWIN, ROBBINS, KINARD, and GRUBER, JJ., agree.

¹Rule 4-2(a)(8)(A) was amended effective January 1, 2010, to require briefs relating to motions to be included in the addendum. See *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. 534 (per curiam).

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