

Cite as 2010 Ark. App. 512

**ARKANSAS COURT OF APPEALS**

DIVISION III

No. CA09-1301

BILL WARFORD

APPELLANT

V.

UNION BANK OF BENTON

APPELLEE

**Opinion Delivered** June 23, 2010APPEAL FROM THE SALINE  
COUNTY CIRCUIT COURT  
[NO. CV-09-419-3]HONORABLE JOHN LANGSTON,  
JUDGE

REBRIEFING ORDERED

**LARRY D. VAUGHT, Chief Judge**

Appellant Bill Warford appeals the order of summary judgment entered by the Circuit Court of Saline County. The circuit court dismissed, with prejudice, Warford's complaint against appellee Union Bank seeking payment on a certificate of deposit. Warford argues on appeal that the circuit court erred because it resolved a credibility issue, found that his complaint was barred by laches, and applied the presumption-of-payment doctrine. Because Warford's abstract is deficient, we order rebriefing.

The briefs in this case were filed after January 1, 2010, the effective date of amendments to Arkansas Supreme Court and Court of Appeals Rule 4-2. *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). The 2010 version of Arkansas Supreme Court Rule 4-2(a)(5)(A) provides that

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[t]he appellant shall create an abstract of the material parts of all the transcripts (stenographically reported material) in the record. Information in a transcript is material if the information 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).<sup>1</sup> The “contents” section of this rule provides that “[a]ll material parts of all hearing transcripts, trial transcripts, and deposition transcripts must be abstracted, even if they are an exhibit to a motion or other paper.” Ark. Sup. Ct. R. 4-2(a)(5)(A).

Warford appeals from the grant of summary judgment, but he has failed to abstract the deposition testimony relied upon in support of and in opposition to the motion. When parties rely on depositions to support their positions, an abstract of the testimony is essential to our understanding of the case. *Gentry v. Robinson*, 2009 Ark. 345, \_\_\_ S.W.3d \_\_\_; *Meyer v. CDI Contractors, LLC*, 2009 Ark. 115, \_\_\_ S.W.3d \_\_\_ (per curiam) (rebriefing ordered where appellant failed to abstract depositions that supported a motion for summary judgment). Although Warford has abstracted the arguments of counsel at the summary-judgment hearing, he has not abstracted any of the excerpts from depositions filed in support of and in opposition to the motion for summary judgment. Therefore, under our rules, his abstract is deficient.

Arkansas Supreme Court Rule 4-2(b)(3) (2010) allows parties who file a deficient brief an opportunity to file a conforming brief. We therefore order Warford to file, within fifteen days from the date of entry of this order, a substituted brief, abstract, and addendum that complies with Rule 4-2. The substituted brief shall include an abstract of all portions of depositions that

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<sup>1</sup>The former rule also required an abstract of deposition testimony. Ark. Sup. Ct. R. 4-2(a)(5)(2009).

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are necessary to an understanding of all questions presented to us for decision. *Gentry, supra*. If Warford fails to do so within the prescribed time, the judgment appealed from may be affirmed for noncompliance with Rule 4-2. After service of the substituted abstract, brief, and addendum, Union Bank shall have an opportunity to file a responsive brief, or it may rely on the brief previously filed in this appeal.

Rebriefing ordered.

GRUBER and BROWN, JJ., agree.