ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
KAREN R. BAKER, JUDGE

DIVISION III

CA07-1062

MAY 21, 2008

GARY MORAN & ENTROPY SYSTEMS, INC.

APPELLANTS

v.

C&A/GFSP JOINT VENTURE, HAROLD MARTIN, KATHRYN B. HADLEY and ACTS' of H&K ENTERPRISES, INC.

APPELLEES

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[NO. CV2006-6452)

HONORABLE TIMOTHY DAVIS FOX, JUDGE

AFFIRMED

Appellants Gary Moran and Entropy Systems, Inc. challenge an order denying their motion to vacate and set aside an order of foreclosure pursuant to Arkansas Rule of Civil Procedure 60(a) "to correct errors or mistakes or to prevent the miscarriage of justice." They assert one point on appeal: The court erred in not granting appellants' motion to vacate the foreclosure decree and reinstate the foreclosure action. For the reasons stated herein, we affirm.

Appellants failed to include a copy of the denied motion in their brief, abstract, or addendum. Rule 4-2(a)(8) of the Rules of the Supreme Court and Court of Appeals provides that the addendum shall include copies of the "order, judgment, decree ... from which the appeal is taken, along with any other relevant pleadings, documents, or exhibits essential to an understanding of the case and the Court's jurisdiction on appeal ...." *See Pyle v. Robertson*, 313 Ark. 692, 858 S.W.2d 662 (1993).

Despite the deficiencies of appellants' brief, we can reach the merits of the case because we may go to the record to affirm. *McGehee v. State,* 344 Ark. 602, 43 S.W.3d 125 (2001).

In their motion, appellants asked the trial court to set aside the commissioners deed and to refund their purchase price because they had no knowledge of the outstanding prior liens on the property at the time of their purchase, but acquired knowledge of these liens subsequent to the sale as a result of a title search they requested and obtained from a title company. Appellants argue that they relied on their review of the trial court's case file, before the sale, which did not disclose any liens, encumbrances, or claims of other persons. They assert that the court was required to rescind the deed to correct errors or mistakes or to prevent the miscarriage of justice. Appellants' argument is unavailing because they had constructive notice of the publicly recorded liens.

Our court explained the constructive notice of public records in the context of a fraud case in *Hughes v. McCann*, 13 Ark. App. 28, 678 S.W.2d 784 (1984):

> Because the Ferguson mortgages were recorded, appellants were on constructive notice of such mortgages as far back as 1971 and no later than 1976-five years prior to their filing this action. *See* Ark.Stat.Ann. § 16-114 (Repl.1979). In *Teall v. Schroder,* 158 U.S. 172 (1895), the United States Supreme Court held that in fraud actions, for purposes of determining when the statute of limitations begins to run, parties alleging fraud are charged with knowledge of any pertinent real estate conveyances from the time such conveyances are placed in public records. Appellees urge that filing for public record and concealment are mutually exclusive. We agree.
>
> Appellants do not argue that appellees committed any affirmative acts that kept them from examining these public records in Hempstead County before 1980. Had appellants examined those records, they could have made themselves aware as early as 1971 of appellees' alleged cover-up of their original fraudulent action. Fraud does suspend the running of the statute of limitations, and the suspension remains in effect until the party having the cause of action discovers the fraud or should have discovered it by the exercise of reasonable diligence. *City National Bank v. Sternberg,* 195 Ark. 503, 114 S.W.2d 39 (1938). Appellants' failure to examine such records in Hempstead County must be attributed to their own lack of reasonable diligence. Because appellants have not shown that appellees committed any affirmative acts to conceal their cause of action from them, the three-year statute of limitations of Ark. Stat. Ann. § 37-206 was not tolled, and appellants' action is thereby barred.

13 Ark. App. at 31-32, 678 S.W.2d at 786-87.

Similarly, had appellants examined the records prior to the sale instead of after the sale, they would have made themselves aware of the recorded mortgages. The records could and should have been discovered by the exercise of reasonable diligence. Appellants' failure to examine such records must be attributed to their own lack of reasonable diligence. Accordingly, the trial court did not err in refusing to grant appellants' motion.

Affirmed.

ROBBINS and BIRD, JJ., agree.