

SUPREME COURT OF ARKANSAS

No. 12-863

CIRCLE D CONTRACTORS, INC.
APPELLANT

V.

BRENT BARTLETT and LINDSEY
BARTLETT
APPELLEES**Opinion Delivered** March 28, 2013APPEAL FROM THE POPE COUNTY
CIRCUIT COURT
[NO. CV-12-112]HONORABLE WILLIAM M.
PEARSON, JUDGEREVERSED AND REMANDED ON
DIRECT APPEAL; AFFIRMED ON
CROSS-APPEAL.**JOSEPHINE LINKER HART, Associate Justice**

Circle D Contractors, Inc. (Circle D) appeals from the dismissal of its case in Pope County Circuit Court. After Circle D prevailed in district court, Brent and Lindsey Bartlett (the Bartletts), perfected an appeal to circuit court. The circuit court, however, found that Circle D had failed to strictly follow the requirements of District Court Rule 9, and it dismissed Circle D's complaint. On appeal, Circle D argues that (1) the circuit court erred when it found District Court Rule 9(c)(1) required strict compliance and that the requirement to plead again was mandatory and not discretionary; (2) its failure to timely refile its complaint acted as a default and the trial court's entry of a default is discretionary, not mandatory; (3) the Bartletts' refiling Circle D's complaint simultaneously with the district court docket sheet waived the requirement of District Court Rule 9(c)(1) that Circle D to refile its complaint. The Bartletts cross-appeal from the circuit court's denial of their

motion for attorney fees. We assumed jurisdiction from the court of appeals pursuant to Arkansas Supreme Court and Court of Appeals Rule 1-2(b)(6) (2012), as this case involves the interpretation of a court rule. We reverse and remand on direct appeal and affirm on cross-appeal.

The relevant facts are not in dispute. Circle D filed suit in district court to collect from the Bartletts money owed for the installation of a swimming pool. After Circle D prevailed in district court, the Bartletts perfected their appeal to circuit court on March 15, 2012. In addition to filing a certified copy of the district court's docket sheet, as required by District Court Rule 9(b), the Bartletts filed the entire district court file, which included Circle D's complaint. Circle D did not refile an additional complaint within thirty days. On April 25, 2012, the Bartletts moved for summary judgment. On April 27, 2012, Circle D responded and refiled its complaint in circuit court.

Before the circuit court, the Bartletts moved to dismiss Circle D's complaint as untimely. Relying on *Johnson v. Dawson*, 2010 Ark. 308, 365 S.W.3d 913, the Bartletts asserted that Circle D's failure to timely refile its complaint violated the requirement that it "strictly comply" with Rule 9. The circuit court ruled that Circle D had failed to strictly comply with the requirements of District Court Rule 9(c) and dismissed Circle D's complaint with prejudice. The circuit court also denied the Bartletts' petition for attorney fees.

Because the circuit court considered matters outside the pleadings, we treat this case as a grant of summary judgment. See *Schultz v. Butterball, L.L.C.*, 2012 Ark. 163, ___

S.W.3d _____. When we review summary-judgment cases where factual issues do not exist, we simply determine whether the prevailing party was entitled to judgment as a matter of law. *Progressive Halcyon Ins. v. Saldivar*, 2013 Ark. 69. We review the interpretation of rules de novo. *Deaver v. Faucon Props., Inc.*, 367 Ark. 288, 239 S.W.3d 525 (2006).

We find merit in Circle D's first and third points, which we will discuss together. The circuit court erred when it found that Circle D's failure to refile its complaint within thirty days mandated that it dismiss Circle D's case. Since Rule 9 was substantially revised, effective January 1, 2009, we have required litigants to strictly comply only with Rule 9(b), (e), and (f), which relates to perfecting their appeals. *Duffy v. Little*, 2011 Ark. 160 (construing requirements of Rule 9(b)); *Johnson v. Dawson*, 2010 Ark. 308, 365 S.W.3d 913 (same); *Robinson v. Villines*, 2009 Ark. 632, 362 S.W.3d 870 (construing the requirements of Rule 9(e)); *Mountain Pure, LLC v. Little Rock Wastewater Util.*, 2011 Ark. 258, 383 S.W.3d 347 (construing requirements of Rule 9(f)). Our decisions regarding perfection of one's appeal to circuit court mirror our jurisprudence with regard to the filing of a notice of appeal in order to vest jurisdiction in this court and the court of appeals. *See Rogers v. Tudor Ins. Co.*, 325 Ark. 226, 925 S.W.2d 395 (1996). However, even within our strict-compliance dictate, we have not exalted form over substance. *See Mountain Pure, supra* (liberally construing the appealing party's filings that were intended to perfect the appeal to circuit court).

The requirement that a plaintiff refile its complaint in circuit court is not jurisdictional; it is procedural, thus only substantial compliance is required. Dist. Ct. R. 9(c).

Cite as 2013 Ark. 131

This requirement was necessitated by the 2009 revision to Rule 9. Prior to the revision, perfection of an appeal from district court to circuit court required the filing of a certified copy of the entire district court record. Ark. Dist. Ct. R. 9 (2008). In a civil case, this record would necessarily have included the pleadings. *See* Dist. Ct. R. 3 (2008).

Here, all of Circle D's pleadings that had been previously filed in district court were filed in circuit court, albeit by the Bartletts. That filing substantially complied with the current version of Rule 9. Present in the circuit court file was the complaint, the answer, and the attachments; therefore the case was procedurally in a posture for trial. Moreover, as we noted previously, Circle D also refiled its complaint in circuit court.

Because we have reversed and remanded the circuit court's dismissal of Circle D's complaint, the Bartletts can no longer claim that they have prevailed in a contract case. Accordingly, we affirm the trial court's denial of the Bartletts' motion for attorney fees on cross-appeal.

Reversed and remanded on direct appeal; affirmed on cross-appeal.

CORBIN and GOODSON, JJ., concurring.

Peel Law Firm, P.A., by: *Richard L. Peel*, for appellant.

Laws Law Firm, P.A., by: *Hugh R. Laws*, for appellees.