

Cite as 2009 Ark. 424

ARKANSAS SUPREME COURT

No. 08-1177

EDWARD LOVELESS
Appellant

v.

FERN TUCKER, CIRCUIT CLERK OF
POPE COUNTY
Appellee

Opinion Delivered September 17, 2009

PRO SE MOTION TO STAY APPEAL
[CIRCUIT COURT OF POPE COUNTY,
CV 2008-38]

MOTION TREATED AS PETITION
FOR WRIT OF CERTIORARI TO
COMPLETE RECORD AND DENIED;
FINAL EXTENSION OF BRIEF TIME
GRANTED.

PER CURIAM

Appellant Edward Loveless has lodged an appeal here from the circuit court's summary judgment in favor of the appellee, Circuit Court Clerk Fern Tucker, in appellant's complaint for declaratory judgment. The genesis of the declaratory judgment action is the denial of appellant's Freedom of Information Act ("FOIA") request directed toward the appellee under the provisions of Arkansas Code Annotated §§ 25-19-101–109 (Repl. 2002 & Supp. 2007).¹

Now before us is appellant's pro se motion to stay the appeal to allow a "Motion for Rule on the [Circuit] Clerk" and a "Motion for Rule on the Court Reporter" to address alleged errors in the transcript. In the alternative, appellant seeks the court's permission to file his brief-in-chief without abstracting any portion of the record on appeal as required under Arkansas Supreme Court Rule 4-2(a)(5). As a further alternative, appellant asks that the matter be remanded to the trial court

¹Appellant's FOIA request sought information and statistical compilations that allegedly proved appellant's claims of improper actions of the trial judge in appellant's underlying criminal matters, Pope County Circuit Court cases numbered CR 2002-658 and CR 2003-115.

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for “further proceedings,” including to allow witnesses to testify on his behalf in the matter.

Even if appellant showed good cause to stay the appeal, the trial court would have no jurisdiction over the cause of action to entertain any motions that appellant proposes to file if the appeal were stayed. Once the record is lodged in the appellate court, the circuit court no longer exercises jurisdiction over the parties and the subject matter in controversy. *Myers v. Yingling*, 369 Ark. 87, 251 S.W.3d 287 (2007). As a result, the proposed motions for rule on clerk below would be a nullity if filed in the circuit court.

Although not precisely articulated, the ultimate remedy sought by appellant is to correct alleged errors and omissions in the record on appeal. We therefore treat such a request as a petition for writ of certiorari pursuant to Arkansas Supreme Court Rule 3-5. Nevertheless, appellant fails to establish that a writ of certiorari should be issued in this matter.

Appellant first asserts that the record of the hearing conducted by the trial judge contained an erroneous file number, and incorrectly designated appellant as the “defendant” in the hearing transcript. Appellant is correct that the cover sheet for the first volume of the record on appeal does incorrectly designate the case number as CR-2008-38, rather than CV-2008-38; yet all of the pleadings and documents in the record reflect the correct file number, which precludes any resulting confusion. Appellant is also correct that the transcript of the hearing below incorrectly designates appellant as the “defendant” throughout the entire hearing; but because it is apparent that the “defendant” consistently refers to appellant, no confusion results when reading the transcript. Accordingly, we cannot conclude that the requested relief is warranted on this point.

Appellant also contends that the hearing transcript failed to include two exhibits that

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appellant introduced into evidence at the hearing. The transcript indicates that appellant handed two documents to the trial judge during the hearing. However, appellant failed to identify the documents for the record, mark the documents as exhibits, and move the court to introduce the documents into evidence. *See* Ark. R. Evid. 901. Because the documents were not made a part of the record of the hearing below, the court reporter was not required to include the documents as exhibits to the hearing transcript.

Appellant additionally claims in the motion that the appellee gave testimony at the hearing, but that the testimony was deleted from the transcript. The hearing was held on a motion for summary judgment, and the trial judge informed appellant that testimony was not taken from witnesses at such hearings. *See* Ark. R. Civ. P. 56(c). Further, the appellee's attorney, Mr. Coutts, addressed the court on behalf of the appellee. There is no indication that the judge directed any questions to the appellee, or that the appellee attempted to personally respond to any questions or address the court at any point during the hearing. Appellant does not establish that the appellee testified at the hearing, or that any testimony given or statements made by the appellee have been deleted from the hearing transcript. Appellant has therefore not established grounds to complete or correct the record.

Appellant makes additional arguments as support for the instant motion. These further allegations, however, fail to demonstrate that a petition for writ of certiorari should be granted, and the petition is denied.

As to appellant's alternative requests for relief, he fails to show entitlement to either. First, appellant asks that he be freed from the abstracting requirement under Arkansas Supreme Court Rule

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4-2(a)(5). He also contends that abstracting the summary judgment hearing is not necessary because his cause of action is premised upon allegations of constitutional violations.

In an appeal, the appellant is required to abstract necessary parts of the record that are material to the points argued on appeal. Ark. Sup. Ct. R. 4-2-(a)(5). This court will not prospectively address whether a particular hearing should be abstracted, nor will it grant a party's request to dispense with abstracting requirements under our rules. If an abstract is deficient, and this court is not able to reach the merits of the case, the deficiency will be addressed pursuant to Arkansas Supreme Court Rule 4-2(b) at the appropriate time.

Appellant's second alternative is to remand the case to the circuit court for "further proceedings" to include taking testimony from witnesses on appellant's behalf. However, as the jurisdiction over this matter has been vested in this court, the trial court no longer has jurisdiction to conduct further proceedings, or take testimony from witnesses. *Myers v. Yingling, supra*. Appellant demonstrates no grounds to grant either alternative request.

We note that the time for appellant to file the brief-in-chief has passed. Appellant has previously been granted two extensions of time to complete and file his brief. However, the time to file appellant's brief-in-chief is extended 20 days from the date of this decision. No further extensions of time will be granted.

Motion treated as petition for writ of certiorari to complete record; final extension of brief time granted.