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SUPREME COURT OF ARKANSAS

No. 10-777

MIZELL GATSON, APPELLANT, VS. FREDDIE BILLINGS, APPELLEE,	**Opinion Delivered** 3-31-11 APPEAL FROM THE UNION COUNTY CIRCUIT COURT, NO. CV-2009-104-4; HON. DAVID F. GUTHRIE, JUDGE, AFFIRMED.

ROBERT L. BROWN, Associate Justice

Appellant Mizell Gatson appeals the order dismissing his complaint for failure to serve a valid summons on the appellee, Freddie Billings. We affirm the dismissal.

The underlying cause of action in this matter is one for personal injury and property damage incurred as a result of a car accident on August 18, 2004. Following that accident, Gatson filed a complaint in Union County Circuit Court against Billings, alleging that Billings negligently operated a towing trailer filled with pine trees attached to a pickup truck. Specifically, Gatson alleged that when he attempted to pass Billings's truck, the trailer swerved toward him and hit his car, which resulted in both physical injury and property damage.

Billings filed an answer denying Gatson's allegations in the complaint and then filed a motion to dismiss the complaint for insufficient process. In his motion, Billings asserted that Gatson's summons was defective because it proclaimed it was from "MIZELL GATSON TO

DEFENDANT," rather than saying it was from "STATE OF ARKANSAS TO DEFENDANT," as required by Arkansas Rule of Civil Procedure 4(b) (2010). Gatson countered that his summons met all of the requirements of Rule 4(b), including referencing the correct court, the plaintiff, the plaintiff's attorney, and the defendant.

On March 24, 2010, the circuit court held a hearing on the motion to dismiss. During the hearing, Billings argued that the phrase "the State of Arkansas to the defendant" must be included in the summons, based on this court's opinion in *Shotzman v. Berumen*, 363 Ark. 215, 213 S.W.3d 13 (2005), and also because article 7, section 49 of the Arkansas Constitution requires it. Billings further asserted that an individual did not have the power to compel the appearance of another and that only the State has the power to issue summonses. In addition, Billings pointed out that the summons in the instant case failed to include the clerk's address and was styled, "Union County Clerk, in the Circuit Court of Union County, Arkansas." As to the latter point, Billings argued that the style of the summons was confusing because it referred to the county clerk and the circuit court, rather than referring to either the county clerk and county court or the circuit clerk and circuit court. In response, Gatson again maintained that the summons complied with all of the requirements found in Rule 4(b). He emphasized that Billings was fully apprised of the lawsuit against him together with how and when he must respond.

On April 22, 2010, the circuit court entered an order granting Billings's motion to dismiss. In that order, the circuit court found that the summons was defective in three ways:

> a. The heading of the style of the case contained the phrase Union County Clerk;
> b. The authority by which the summons was issued was stated to be Mizell Gaston instead of the State of Arkansas;
> c. The summons did not list the address of the clerk at the bottom of the page.

The circuit court concluded that Rule 4(b) requires strict compliance and that the summons in this case was defective as to form. Because more than 120 days had elapsed since the issuance of the summons without valid service of process, the circuit court dismissed the complaint without prejudice.

On appeal, Gaston mounts the argument that the circuit court erred in granting the motion to dismiss because his summons complies with all of the requirements of Rule 4(b), despite the fact that the language in his summons is not identical to that of the Official Form of Summons adopted by this court. *See* Ark. R. Civ. P. 4, Addition to Reporter's Notes, Official Form of Summons (2001).

Our standard of review for our court rules is clear. A circuit court's interpretation of a court rule is reviewed de novo by this court. *Solis v. State*, 371 Ark. 590, 595, 269 S.W.3d 352, 356 (2007). On that point, this court has said

> We construe rules using the same means, including canons of construction, that are used to interpret statutes. *Williams v. State*, 347 Ark. 728, 67 S.W.3d 548 (2002); *Smith v. Smith*, 341 Ark. 590, 19 S.W.3d 590 (2000). The first rule in considering the meaning and effect of a statute or rule is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. When the language is plain and unambiguous, there is no need to resort to rules of statutory construction. *Yamaha Motor Corp., U.S.A. v. Richard's Honda Yamaha*, 344 Ark. 44, 38 S.W.3d 356 (2001).

Aikens v. State, 368 Ark. 641, 643, 249 S.W.3d 788, 789–90 (2007) (citing *National Front Page, LLC v. State ex rel. Pryor*, 350 Ark. 286, 291, 86 S.W.3d 848, 851 (2002)).

> Rule 4(b) governs the form of summonses and provides
>
> > The summons shall be styled in the name of the court and shall be dated and signed by the clerk; be under the seal of the court; contain the names of the parties; be directed to the defendant; state the name and address of the plaintiff's attorney, if any, otherwise the address of the plaintiff; and the time within which these rules require the defendant to appear, file a pleading, and defend and shall notify him that in case of his failure to do so, judgment by default may be entered against him for the relief demanded in the complaint.

Our current Official Form of Summons, as already referenced, was adopted on May 24, 2001 and became effective on July 1, 2001. *See In re Implementation of Amendment 80: Amendments to the Rules of Civil Procedure*, 345 Ark. App'x 606 (2001).

In *Trusclair v. McGowan Working Partners*, 2009 Ark. 203, 306 S.W.3d 428, this court set out our canons of construction for our court rules dealing with summonses, stating:

> Our case law is well-settled that statutory service requirements, being in derogation of common-law rights, must be strictly construed and compliance with them must be exact. This court has held that the same reasoning applies to service requirements imposed by court rules. More particularly, the technical requirements of a summons set out in Ark. R. Civ. P. 4(b) must be construed strictly and compliance with those requirements must be exact. Actual knowledge of a proceeding does not validate defective process. The reason for this rule is that service of valid process is necessary to give a court jurisdiction over a defendant.
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> We have made it clear in a long line of cases that compliance with Rule 4(b) must be exact. The bright line standard of strict compliance permits certainty in the law; whereas, a substantial compliance standard would lead to an ad hoc analysis in each

> case in order to determine whether the due process requirements of the Arkansas and U.S. Constitutions have been met.

Trusclair, 2009 Ark. 203, at 3–4, 306 S.W.3d at 430 (internal citations omitted). Without question, this court has made it patently clear that a summons must comply exactly and not substantially with the requirements of Rule 4(b). *See Patsy Simmons Ltd. Partnership v. Finch*, 2010 Ark. 451, ¶ 9, ___ S.W.3d ___, ___ ("Specifically, this court has consistently required that the technical requirements of a summons as set out in Arkansas Rule of Civil Procedure 4(b) be strictly construed and compliance with those requirements be exact.").

The circuit court's order noted three deficiencies in Gaston's summons, but we address only the authority by which the summons was issued. Gatson's summons specified that it was from "Mizell Gatson to Defendant," rather than from the State of Arkansas. The language in Rule 4(b) requiring that the summons be directed to the defendant must be read in conjunction with article 7, section 49 of the Arkansas Constitution, which provides in relevant part, "All writs and other judicial process, shall run in the name of the State of Arkansas, bear test and be signed by the clerks of the respective courts from which they issue." The language in article 7, section 49 is plain and unambiguous, and it must be given its obvious and common meaning. *See Smith v. Sidney Moncrief Pontiac, Buick, GMC Co.*, 353 Ark. 701, 720, 120 S.W.3d 525, 537 (2003) (citing *Worth v. City of Rogers*, 341 Ark. 12, 14 S.W.3d 471 (2000); *Daniel v. Jones*, 332 Ark. 489, 966 S.W.2d 226 (1998)). Because Gatson's summons ran in the name Mizell Gatson, rather than the State of Arkansas, it fails to meet the

requirements of Rule 4(b), which necessarily incorporate article 7, section 49 of the Arkansas Constitution.

Accordingly, we agree that Gatson's summons falls short of strict compliance with the direction requirement of Rule 4(b), when read in conjunction with the mandate of article 7, section 49 of the Arkansas Constitution. We hold that Gatson had no authority under our constitution to direct the summons to Billings, because that authority lies only with the State of Arkansas. Article 7, section 49 of the Arkansas Constitution makes that perfectly clear.

The circuit court correctly dismissed this matter. Because we decide this case as we do, we need not address the other grounds for dismissal raised by Billings.

Affirmed.