

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA 10-468

RONALD WORLEY AND MERYL
WORLEY

APPELLANTS

V.

CITY OF JONESBORO, ARKANSAS;
MARY JO DRUM; CRYE-LEIKE OF
ARKANSAS, INC.; AND JOYCE
ISELL

APPELLEES

Opinion Delivered April 27, 2011

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DIVISION
[NO. CV-05-421]

HONORABLE DAVID N. LASER,
JUDGE

REBRIEFING ORDERED

DOUG MARTIN, Judge

Appellants Ronald Worley and Meryl Worley purchased a house from appellee Mary Jo Drum, who had listed it with appellees Crye-Leike of Arkansas, Inc., and its agent, Joyce Isbell. Appellants later sued appellees and the City of Jonesboro, alleging that their garage had flooded six times because of inadequate drainage. They alleged fraud against appellees; breach of fiduciary duty by Isbell and Crye-Leike; and unlawful taking by the city. The circuit court granted summary judgment and awarded attorney's fees to appellees. The remaining claims against the city went to trial, and the jury awarded appellants \$15,000. Appellants subsequently appealed, challenging the summary judgment for appellees and the award of attorney's fees. On cross-appeal, appellees argue that the award of fees was too low. We must order rebriefing because appellants' abstract is deficient.

Focusing on Drum's deposition testimony, appellants assert that Drum made fraudulent statements in her owner's disclosure form. Appellants, however, did not abstract any of the deposition testimony, and appellees' supplemental abstract is not complete. Arkansas Supreme Court Rule 4-2(a)(5) (2011) provides that material portions of depositions must be abstracted in the same manner as witness testimony. When parties rely on depositions to support their positions, an abstract is essential to our understanding of the case. *Gentry v. Robinson*, 2009 Ark. 345, 322 S.W.3d 498. Without an adequate abstract, we cannot determine whether the circuit court erred in granting summary judgment to appellees.

Arkansas Supreme Court Rule 4-2(b)(4) (2011) allows parties who file a deficient brief an opportunity to file a conforming brief. We therefore order appellants to file, within fifteen days of entry of this order, a substituted abstract, brief, and addendum that complies with Rule 4-2. The substituted brief shall include an abstract of all portions of depositions that are necessary to an understanding of all questions presented to us for decision. If appellants fail 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, appellees shall have an opportunity to file a responsive brief in the time prescribed by the court, or they may rely on the brief previously filed in this appeal.

Rebriefing ordered.

HART and GRUBER, JJ., agree.