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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA10-1243

MEARL MCCOY APPELLANT V. ERNEST A. JACKSON, JR., and CAROLYN JACKSON APPELLEES	**Opinion Delivered** JUNE 22, 2011 APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [NO. CV-10-980-3] HONORABLE LYNN WILLIAMS, JUDGE REMANDED TO SETTLE AND SUPPLEMENT THE RECORD; REBRIEFING ORDERED

CLIFF HOOFMAN, Judge

Appellant Mearl McCoy appeals from an order dismissing his complaint with prejudice. McCoy argues that it was error to dismiss his suit on the basis of res judicata and for failure to join a necessary party.

This suit originated with a family dispute over land in Garland County. In 2009, appellees, Ernest and Carolyn Jackson, filed suit against Mary McCoy, Dorothy Ford, Theresa Dunnavent, and Mearlene Hurst Weydemeyer in Garland County Circuit Court case number CV 2009-706-III. The Jacksons sought to set aside a deed filed in 2009. After a bench trial, the circuit court ruled in favor of the Jacksons. There was no appeal taken from that case. Following that lawsuit, McCoy filed suit against the Jacksons claiming that deeds

filed in 1994 and 1995 conveying the property to the Jacksons were forgeries. The Jacksons moved to dismiss the suit under the doctrine of res judicata and for failure to join Mary McCoy as a necessary party. The motion to dismiss was granted, and McCoy filed a timely notice of appeal.

We cannot reach the merits of the appeal at this time because of deficiencies in both the record on appeal and appellant's brief.

McCoy argues on appeal that it was error for the trial court to dismiss his suit on the basis of res judicata because he claims three of the required elements were not met. The claim-preclusion aspect of res judicata forecloses relitigation in a subsequent suit when (1) the first suit resulted in a final judgment on the merits; (2) the first suit was based upon proper jurisdiction; (3) the first suit was fully contested in good faith; (4) both suits involved the same claim or cause of action; and (5) both suits involved the same parties or their privies. *Pentz v. Romine*, 75 Ark. App. 274, 280, 57 S.W.3d 235, 239–40 (2001). Additionally, claim preclusion bars not only the relitigation of issues that were actually litigated in the first suit but also those that could have been litigated but were not. *Id.*

In order to determine whether the trial court properly granted the motion to dismiss based on res judicata, "we must be able to determine the specific claims and issues that were presented and resolved in the prior suit." *McNeil v. Lillard*, 79 Ark. App. 69, 86 S.W.3d 389 (2002). In *McNeil*, we held that we could not make such a determination without reviewing the judgment in the prior proceeding. *Id.* Because the appellant in *McNeil* failed to include

the letter opinion from the first trial in her addendum, we ordered rebriefing. *Id.* Here, the record and addendum contain no order or pleadings from the prior suit. Therefore, we must remand to settle and supplement the record to include all necessary pleadings, transcripts, and orders from the prior suit upon which the trial court based its ruling of res judicata. We also order rebriefing to include all necessary documents in the addendum.

A second deficiency in McCoy's brief also requires rebriefing. McCoy's addendum includes a partial transcript from the prior case of the trial court's ruling from the bench. The transcript was attached as Exhibit A to McCoy's response to the motion to dismiss. Arkansas Supreme Court Rule 4-2(a)(5)(A) (2011) provides in part as follows:

> All material information recorded in a transcript (stenographically reported material) must be abstracted. Depending on the issues on appeal, material information may be found in, for example, counsel's statements and arguments, voir dire, testimony, objections, admissions of evidence, proffers, colloquies between the court and counsel, jury instructions (if transcribed), and rulings. All material parts of all hearing transcripts, trial transcripts, and deposition transcripts must be abstracted, even if they are an exhibit to a motion or other paper.

"Information in a transcript is material if the information is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal." Ark. Sup. Ct. R. 4-2(a)(5). As McCoy's argument includes multiple citations to the transcript in the addendum, it is material to his argument on appeal. Therefore, we also order rebriefing to require that the transcript be abstracted.

We direct appellant to file with our clerk's office, within thirty days from the date of this order, a certified, supplemental record. *See* Ark. R. App. P.–Civ. 6(e) (2011); *Chiodini*

v. Lock, 2009 Ark. 343, 322 S.W.3d 9. Upon filing the supplemental record, appellant shall have fifteen days in which to file a substituted abstract, addendum, and brief. *See* Ark. Sup. Ct. R. 4-2(b)(3) (2011). After service of appellant's substituted brief, appellees shall have the opportunity to revise or supplement their brief. We encourage appellate counsel to review our rules to ensure that no additional deficiencies are present.

Remanded to settle and supplement the record and for rebriefing.

WYNNE and MARTIN, JJ., agree.