

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA11-73

WILLIAM SMITH and MINDY SMITH

APPELLANTS

V.

LORI SMITH

APPELLEE

Opinion Delivered October 5, 2011

APPEAL FROM THE CLEVELAND
COUNTY CIRCUIT COURT
[NO. PR2010-12-1]

HONORABLE HAMILTON H.
SINGLETON, JUDGE

RETURNED FOR REBRIEFING

JOSEPHINE LINKER HART, Judge

William Smith and Mindy Smith (the Smiths) appeal from an order of the Cleveland County Circuit Court setting aside an interlocutory adoption decree. On appeal, the Smiths argue that the trial court erred because the one-year statute of limitations had elapsed; the court had lost jurisdiction after ninety days; and it erred in finding that there was fraud. However, we are unable to address this case on the merits due to significant deficiencies in the Smiths' abstract and addendum. Because the Smiths' brief does not conform to the requirements of Supreme Court Rule 4-2, we reject the brief and give them the opportunity to correct the deficiencies by rebriefing.

Arkansas Supreme Court Rule 4-2(a)(5) requires the appellant to create an abstract "of the material parts of all the transcripts . . . in the record." Information is "material" if it "is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal." *Id.* Further, Arkansas Supreme Court Rule 4-2(a)(8) requires the



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addendum to contain true and legible copies of the non-transcript documents in the record on appeal that are essential for the appellate court to understand the case and to decide the issues on appeal. Neither of these requirements are satisfied in the brief before us.

The Smiths' abstract lacks that portion of the hearing where their trial counsel raised the statute-of-limitations argument to the trial court. In *Patrick v. State*, 358 Ark. 300, 188 S.W.3d 906 (2004) (per curiam), our supreme court held that an abstract that fails to contain this argument is flagrantly deficient. Regarding the material that is actually abstracted, we hold that it is not complete, as required by Rule 4-2, and therefore, flagrantly deficient. *Mack-Reynolds Appraisal Co. v. Morton*, 2009 Ark. App. 736. Here, twenty-five pages of the transcript were reduced to less than two pages of abstract.

The Smiths' addendum is likewise deficient because it fails to include all relevant pleadings and other material non-transcript portions of the record. It does not include their answer to appellee Lori Smith's petition to set aside the adoption and Lori's trial brief. *Bryan v. City of Cotter*, 2009 Ark. 172, 303 S.W.3d 64.

Due to the Smiths' failure to comply with Arkansas Supreme Court Rule 4-2, we return their brief to give them the opportunity to file a substituted brief, curing the deficiencies within fifteen days from the date of entry of this order. Ark. Sup. Ct. R. 4-2(b)(3). After service of the substituted brief, Lori shall have the opportunity to file a responsive brief in the time prescribed by the supreme court clerk, or she may choose to rely on the brief previously filed in this appeal. While we have noted the above-mentioned deficiency, we encourage the Smiths' counsel to review Rule 4-2 in its entirety as it relates



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to the abstract and addendum, as well as the entire record, to ensure that no additional deficiencies are present, as any subsequent rebriefing order may result in affirmance of the order or judgment due to noncompliance with Rule 4-2. Ark. Sup. Ct. R. 4-2(b)(3) (2011); *see also Carter v. Cline*, 2011 Ark. 266.

Returned for rebriefing.

PITTMAN and ROBBINS, JJ., agree.

The Harper Law Office, PLLC, by: *Kenneth A. Harper*, for appellants.

Potts Law Office, by: *Gary W. Potts*, for appellee.