

# ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA 11-179

CLIFFORD FLOWERS

APPELLANT

V.

AMERISOURCEBERGEN DRUG  
CORP.

APPELLEE

**Opinion Delivered** November 9, 2011

APPEAL FROM THE JEFFERSON  
COUNTY CIRCUIT COURT,  
[NO. CV-2010-69-2-5]

HONORABLE JODI RAINES  
DENNIS, JUDGE

REMANDED FOR  
SUPPLEMENTATION OF RECORD;  
REBRIEFING ORDERED

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**WAYMOND M. BROWN, Judge**

Appellant Clifford Flowers appeals from a November 5, 2010 order denying his petition to quiet title and dismissing his claims with prejudice. However, we are unable to reach the merits of the appellant's arguments because the record and addendum are incomplete. Therefore, we remand for supplementation of the record and order rebriefing.

In December 2006, a default judgment was entered against the appellant by a district court in Denton County, Texas, concerning a breach-of-contract dispute between Flowers and Amerisourcebergen Drug Corp. ("Amerisource"). In February 2007, Amerisource filed an application in the circuit court of Jefferson County to register the foreign default judgment. The circuit court granted the application and entered an order registering the judgment on December 17, 2007. The record shows that an adversarial hearing on the issue



of registration was held prior to the court’s ruling and order, but the transcript of that hearing is not contained in the record, nor is the hearing abstracted in Flowers’s brief. In addition, the record and addendum do not contain any ruling by the circuit court on Flowers’s February 9, 2010 motion to vacate and set aside the circuit court’s order of October 28, 2009.<sup>1</sup>

We further note that the November 5, 2010 order from which Flowers has appealed does not rule on the issue of attorney fees. In the order, the court stated that Amerisource’s request for attorney fees and costs would be taken under advisement,<sup>2</sup> and the addendum contains Amerisource’s request and Flowers’s response. However, neither the record nor the addendum contains a ruling on this issue. The issue of attorney fees is a collateral one, but if a ruling by the circuit court on the matter exists and is pertinent to any issue in this appeal, it and any other relevant, omitted orders should be included in the record and addendum.

Arkansas Supreme Court Rule 4–2 requires the addendum to contain all non-transcript documents in the record that “are essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal.” In addition, this court may, sua

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<sup>1</sup>The October 28, 2009 order denied Flowers’s March 17, 2008 petition for a temporary stay and permanent injunction against enforcement of the default judgment, and his July 21, 2009 motion to vacate the default judgment or modify the judgment and enjoin its enforcement.

<sup>2</sup>The order granted Amerisource’s Ark. R. Civ. P. 12(b)(6) motion to dismiss, which requested attorney fees available under Ark. Code Ann. § 16-22-309 when a case with no justiciable issue is filed.



sponte, direct parties to supply omitted material by filing a certified, supplemental record.<sup>3</sup> It is the duty of the appellant to bring up an adequate record for our review.<sup>4</sup> Even if it turns out that an appeal is wholly without merit, we cannot so hold without a brief that complies with our rules.

Accordingly, we remand this case for supplementation of the record and addendum. Flowers has thirty days from the date of this opinion to file the supplemental record with our clerk's office. Pursuant to Ark. Sup. Ct. R. 4-2(b)(4),<sup>5</sup> he has seven calendar days after the record is supplemented to file a supplemental addendum. We strongly encourage appellate counsel, prior to filing the supplemental addendum, to review our rules to ensure that no additional deficiencies are present.

Remanded for supplementation of record and rebriefing.

HART and GRUBER, JJ., agree.

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<sup>3</sup>Ark. R. App. P.–Civ. 6(e); *Gilbert v. Moore*, 362 Ark. 657, 210 S.W.3d 125 (2005).

<sup>4</sup>*Rodriguez v. Ark. Dep't of Human Servs.*, 360 Ark. 180, 200 S.W.3d 431 (2004).

<sup>5</sup>Amended by *In re 4-2(b) of the Rules of the Supreme Court and Court of Appeals*, 2011 Ark. 141 (per curiam).