

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA11-846

ALVIN M. BECK
APPELLANT/CROSS-APPELLEE

V.

INTER CITY TRANSPORTATION,
INC.
APPELLEE/CROSS-APPELLANT

Opinion Delivered February 15, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTEENTH DIVISION,
[NO. CV-2010-4579]

HONORABLE MACKIE M. PIERCE,
JUDGE

REMANDED FOR
SUPPLEMENTATION OF THE
RECORD; REBRIEFING ORDERED

RITA W. GRUBER, Judge

This case involves the interpretation of two Arkansas statutes: Ark. Code Ann. § 26-54-112 (Repl. 2008), which governs the reinstatement of a corporate charter; and Ark. Code Ann. § 16-22-308 (Repl. 1999), which authorizes an award of attorney's fees in contract cases. Appellant Alvin M. Beck appeals the trial court's denial of his motion to dismiss pursuant to Ark. R. Civ. P. 12(b)(8) because a similar lawsuit he had filed against appellee Inter City Transportation, Inc. (Inter City) was pending in another county. Inter City has filed a cross-appeal of the court's order denying its request for attorney's fees and granting appellant's request for an equitable lien. Because Inter City has presented us with an incomplete record and abstract, we are unable to reach the merits of its argument. Therefore, we remand for supplementation of the record and order rebriefing.

Inter City's principal argument on cross-appeal is that the trial court erred in denying



its motion for attorney's fees under Ark. Code Ann. § 16-22-308, which allows the trial court to award attorney's fees to the prevailing party in a civil action for breach of contract. In its written order denying Inter City's request for fees, the trial court stated that it denied Inter City's motion "in open court on grounds that the Court's previous judgment was in the nature of a rescission of contract."

Whether attorney's fees are authorized in this case depends on whether the case was based primarily in contract or in tort. Inter City's complaint alleged breach of contract and fraud. Although Inter City provided an abstract of the hearing on the motion for an award of attorney's fees, its brief does not contain an abstract of the hearing held on February 17, 2011, that led to the underlying judgment in this case. Nor is a transcript of the hearing contained in the record. Arkansas Supreme Court Rule 4-2 requires the appellant to create an abstract of the material parts of all transcripts. Information in a transcript is material if it is essential for us to understand the case and decide the issues on appeal. Ark. Sup. Ct. R. 4-2(a)(5) (2011). The hearing on the merits in this case is essential for us to understand the case and decide the issues on cross-appeal.

Accordingly, we remand for supplementation of the record and order rebriefing on cross-appeal due to deficiencies in Inter City's abstract. See *Flowers v. Amerisourcebergen Drug Corp.*, 2011 Ark. App. 689. Inter City 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), it has seven calendar days after the supplemented record is filed to file a supplemental abstract. See *In re 4-2(b) of the Rules of the Supreme Court and Court of Appeals*, 2011 Ark. 141 (per curiam).



Cite as 2012 Ark. App. 147

Remanded for supplementation of record; rebriefing ordered.

MARTIN and BROWN, JJ., agree.

Daggett, Donovan & Perry, PLLC, by: *Robert J. Donovan*, for appellant.

James, Fink & House, P.A., by: *Patrick R. James*, for appellee/cross-appellant.