

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 11-780

LES MARLOW, BROOKS “CHIP”
MEADOWS, CARY MARLOW,
CHAD MARLOW, and LEIGH CARSON
APPELLANTS

V.

UNITED SYSTEMS OF ARKANSAS,
INC., and GLENN PETKOVSEK
APPELLEES

Opinion Delivered April 18, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FIRST DIVISION, [NO. CV-08-2078]

HONORABLE LEON JOHNSON,
JUDGE

REBRIEFING ORDERED

JOHN B. ROBBINS, Judge

Appellants Les Marlow, Brooks “Chip” Meadows, Cary Marlow, Chad Marlow, and Leigh Carson appeal the order of the Pulaski County Circuit Court that granted appellee Glenn Petkovsek’s motion for attorney fees and costs. We order rebriefing.

This case commenced with a complaint filed in 2008 by Les Marlow against Glenn Petkovsek and United Systems of Arkansas, Inc., for breach of contract and breach of the duties of good faith and fair dealing implied within that contract. Les, Chad, and Cary Marlow, along with Chip Meadows and Leigh Carson, each filed wrongful-termination-in-violation-of-public-policy claims against Glenn Petkovsek and United Systems. Various counterclaims were filed against appellants, including breach of contract, breach of fiduciary duty, and conversion. The jury entered verdicts in favor of United Systems on its claims but awarded zero damages. The jury found that none of the plaintiffs’ claims were proven,



entering defense verdicts for Petkovsek and United Systems. Upon consideration of a motion for attorney fees and costs submitted by United Systems and Petkovsek, the trial court awarded Petkovsek \$164,758.90 for his successful defense. It is this award that the appellants appeal.

We do not address the merits at this time because the brief filed by appellants is noncompliant with Arkansas Supreme Court Rule 4-2 and is noncompliant with the orders of our court. We provide appellants an opportunity to provide a substituted brief that complies with both our court rules and our orders.

To explain, appellants commenced their appeal by filing a transcript with our court's clerk in August 2011. Appellants attempted to file a noncompliant brief on August 26, which was rejected by our clerk's office. Appellants submitted another brief to our clerk's office on August 29. Appellees filed an objection to appellants' brief in that references were made to the judgment and jury interrogatories that were not part of the record or included in appellants' addendum. Appellees filed their responsive brief on October 5. Appellants were in agreement that the record needed supplementation, adding a request for transcription of additional hearings in their October 13 response. Appellees resisted the addition of the later hearing to the record on appeal. Appellants filed a reply brief on October 19.

Our court issued a writ of certiorari on October 26, directing the court reporter to prepare the missing portions of the record. That same date, our court sent correspondence to both attorneys, noting that appellants were to provide a supplemental addendum within thirty days of the record's completion. The supplemental record was filed on November 22,



so appellants' supplemental addendum was due December 22. On December 16, appellants filed a "Motion To File A Supplemental Abstract And Addendum And Corrected Brief."

Appellants were granted a seven-day extension by our clerk's office, so the due date for their supplemental addendum was then December 29. On that date, appellants filed a "Supplemental Abstract & Addendum." This contained an abstract of the additional hearings and an addendum of the additional transcript documents. On January 11, 2012, our court took up appellants' December 16 motion, and denied it, stating:

Appellants' motion to file a supplemental abstract and addendum and corrected brief is denied. Appellants' substituted brief due February 10, 2012. Appellees' amended brief due within fifteen days of filing of appellants' substituted brief.

Appellants filed a substituted brief on February 10, followed by appellees' amended responsive brief on February 24.

Appellants' substituted brief is noncompliant with our briefing rules in that the statement of the case refers to page citations in the record, not the abstract or addendum, in contravention of Ark. Sup. Ct. R. 4-2(a)(6). This was pointed out to counsel with appellants' first attempt to file their brief. Furthermore, appellants' substituted brief refers to materials in the supplemental abstract that it filed in December 2011. We denied appellants' request to file a supplemental abstract with the supplemental addendum on January 11, 2012, and we directed appellants to file a substituted brief by February 10, 2012. The substituted brief does not contain the entire abstract, nor does it contain an addendum. It instead refers us back to their original brief's addendum filed in August 2011 and the supplemental abstract and addendum filed in December 2011.



Contents of appellate briefs are specifically outlined in Ark. Sup. Ct. R. 4-2(a), requiring a cover, a table of contents, an informational statement and jurisdictional statement, points on appeal, a table of authorities, an abstract of material parts of all transcripts in the record, a statement of the case, argument, and addendum. Our rules provide that if an appellant desires to supplement the abstract or addendum, the appellant may request to file a substituted brief. Rule 4-2(b)(2). “Mere modifications of the original brief by the appellant, such as by interlineation, will not be accepted[.]” Rule 4-2(b)(3). As it stands at this juncture, our court would be required to refer to three appellants’ briefs in order to determine the merit in appellants’ arguments, which we will not do.

We provide appellants an opportunity to file a cogent, complete, compliant appellants’ brief within fifteen days of this opinion. If they fail to do so, we may affirm for noncompliance with Ark. Sup. Ct. R. 4-2. Within fifteen days after service of the substituted brief, appellees are afforded an opportunity to file a substituted brief. *See, e.g., Brock v. Townsell*, 2009 Ark. 81, 314 S.W.3d 271.

Rebriefing ordered.

MARTIN and HOOFFMAN, JJ., agree.

The Brad Hendricks Law Firm, by: *Lloyd W. “Tré” Kitchens* and *Caroline C. Lewis*, for appellants.

Newland & Associates, PLLC, by: *Joel F. Hoover* and *Elizabeth C. Abney*, for appellees.