

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA12-110

LOCA LUNA, LLC, AND WILKES-
ABERNATHY, LLC

APPELLANTS

V.

BOARD OF ADJUSTMENT, CITY OF
LITTLE ROCK AND W. ROSS
MCCAIN

APPELLEES

GREENS INVESTMENTS, LLC, AND
B&B TACO GARAGE, LLC

INTERVENORS/APPELLEES

Opinion Delivered October 31, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIFTH
DIVISION
[NO. 60CV-10-7196]

HONORABLE WENDELL GRIFFEN,
JUDGE

REBRIEFING ORDERED

RAYMOND R. ABRAMSON, Judge

Loca Luna, LLC, and Wilkes-Abernathy, LLC, appeal from the circuit court's order affirming the Little Rock Board of Adjustment's approval of a zoning variance in favor of Greens Investments, LLC. We order rebriefing, however, because the abstract is deficient. Greens Investments, through its architect W. Ross McCain, applied for a zoning variance that was opposed by appellant Loca Luna. The Board approved the variance, and Loca Luna appealed to the Pulaski County Circuit Court. Greens Investments and B&B Taco Garage intervened in the case and they, along with the Board, moved for summary judgment. The circuit court entered an order affirming the Board's decision, and Loca Luna appealed from that order. Both the Board's and the intervenors' motions for summary judgment included



extensive deposition testimony as exhibits. However, appellants did not abstract any deposition testimony.

Arkansas Supreme Court Rule 4-2(a)(5) (2011) provides that material portions of depositions must be abstracted in the same manner as witness testimony. When parties rely on depositions to support their positions, an abstract is essential to our understanding of the case. *Worley v. City of Jonesboro*, 2011 Ark. App. 316. Without an adequate abstract, we cannot determine whether the circuit court erred in affirming the Board's decision. Arkansas Supreme Court Rule 4-2(b)(4) (2011) allows parties who file a deficient brief an opportunity to file a conforming brief. We therefore order appellants to file, within fifteen days, a substituted abstract, brief, and addendum that complies with Rule 4-2. The substituted brief shall include an abstract of all portions of depositions that are necessary to an understanding of all questions presented to us for decision. If appellants fail to do so within the prescribed time, the judgment appealed from may be affirmed for noncompliance with Rule 4-2. After service of the substituted abstract, brief, and addendum, appellees shall have an opportunity to file a responsive brief in the time prescribed by the court, or they may rely on the brief previously filed in this appeal.

Rebriefing ordered.

PITTMAN and MARTIN, JJ., agree.

Gill Elrod Ragon Owen & Sherman, P.A., by: *Drake Mann*, for appellants.

Fuqua Campbell, P.A., by: *Patrick L. Spivey*, for appellees W. Ross McCain, Greens Investments, LLC, and B & B Taco Garage, LLC.