

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CA12-921

STEPHENS PRODUCTION  
COMPANY

APPELLANT

V.

BOYD BLACKARD, TERRY  
BLACKARD, AND BARBARA  
BLACKARD

APPELLEES

Opinion Delivered May 1, 2013

APPEAL FROM THE JOHNSON  
COUNTY CIRCUIT COURT  
[CR-2009-99]

HONORABLE DENNIS CHARLES  
SUTTERFIELD, JUDGE

REBRIEFING ORDERED

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## DAVID M. GLOVER, Judge

Stephens Production Company purportedly appeals from a July 18, 2012 order granting appellees', Boyd, Terry, and Barbara Blackard's, motion/amended motion to confirm settlement, and from a July 18, 2012 order granting the Blackards' request for attorney's fees associated with enforcement of the settlement agreement. We are not able to address the merits of Stephens Production Company's arguments because of deficiencies in its addendum. We therefore order rebriefing.

Rule 4-2(a)(8) of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas (2012) sets forth the requirement that an appellant's brief contain an addendum. It also describes the necessary contents of that addendum. This rule provides that the addendum shall contain true and legible copies of the non-transcript documents in the record on appeal that are essential for this court "to confirm its jurisdiction, to



Cite as 2013 Ark. App. 289

understand the case, and to decide the issues on appeal.” Among other specifically described items, the addendum must include “the order, judgment, decree, ruling, letter opinion, or administrative agency decision from which the appeal is taken”; “any order adjudicating any claim against any party with or without prejudice”; and “any Rule of Civil Procedure 54(b) certificate making an otherwise interlocutory order a final judgment[.]”

### *Background*

This case originated in 2009 with the Blackards filing a quiet-title action concerning their claim to ownership of the surface and all oil, gas, and other minerals lying in and under certain described property located in Johnson County, Arkansas. They named as defendants in the case Stephens Production Company, Anadarko E & P Company, L.P., Anadarko Land Corp., and Upland Industrial Development Company. In 2011, Stephens Production Company filed a counterclaim and cross-claim for interpleader, naming the Blackards as counter-defendants and Anadarko E & P Company, L.P., Anadarko Land Corp., and Upland Industrial Development Company as cross-defendants.

On March 20, 2012, the Blackards filed a motion to confirm settlement, alleging that they had reached a negotiated settlement with separate defendant Stephens Production Company. In this motion, the Blackards also asserted that in “[r]elying on the settlement with Stephens Production Company, [the Blackards] made commitments to the separate Defendant, Anadarko, which have been accepted, successfully eliminating



Anadarko’s claim.” On April 3, 2012, separate defendant Stephens Production Company responded to the motion to confirm settlement and asserted that the motion should be denied because Stephens Production Company had justifiably rescinded the settlement agreement because of a mutual mistake of law. Subsequently, the motion was amended and restated, with responses and replies thereto filed.

On May 2, 2012, a hearing was held on the motion/amended motion to confirm settlement. The hearing essentially consisted of colloquy among the trial court and counsel for the Blackards, Stephens Production Company, and the Anadarko defendants. As part of the colloquy, counsel for the Anadarko defendants acknowledged that a settlement had been reached between those defendants and the Blackards and requested an order dismissing the Anadarko defendants “with no further obligations to Stephens under the lease.” Counsel for Stephens Production Company stated that it had no objection to the settlement between the Blackards and the Anadarko defendants. At the conclusion of the hearing, the trial court stated that it would sign the order releasing the Anadarko defendants and that it was granting the motion to enforce settlement between the Blackards and Stephens Production Company.

On May 18, 2012, separate defendant Stephens Production Company filed a motion for reconsideration—before entry of the order granting the motion to confirm settlement, citing Arkansas Rule of Civil Procedure 59(b)(2012)<sup>1</sup> as its authority for doing

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<sup>1</sup>(b) *Time for Motion*. A motion for a new trial shall be filed not later than 10 days after the entry of judgment. A motion made before entry of judgment shall become effective and be treated as filed on the day after the judgment is entered. If the court neither grants nor denies the motion within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.



so. On May 24, 2012, the Blackards filed a motion to recover attorney's fees incurred in pursuing their motion to confirm settlement.

At a hearing held on July 18, 2012, the trial court first addressed Stephens Production Company's objections to the order proposed by the Blackards regarding the court's granting of their motion to confirm settlement. The trial court determined that it would sign the Blackards' proposed order because it accurately reflected the trial court's ruling. Next, Stephens Production Company renewed its motion for reconsideration, and the trial court stated that it would take the matter under advisement. Finally, the Blackards argued their petition for attorney's fees associated with their motion to confirm settlement, and the trial court also took that matter under advisement.

The addendum in this case contains only two orders. One is merely an April 10, 2012 order setting the May 2, 2012 hearing date, and it is not significant for purposes of this appeal. The second order was filed July 20, 2012, and its opening paragraph provided in pertinent part: "On the 18<sup>th</sup> day of July 2012 this court conducted a hearing regarding an oral motion for reconsideration made by the defendant, Stephens Production Company, . . . which was made following the entry of the court's Order from the last hearing, as well as a request for an award of attorney's fees by the plaintiffs." The order then proceeded to deny Stephens Production Company's motion for reconsideration and to grant the Blackards' motion for attorney's fees associated with enforcement of the settlement agreement.

The addendum does not contain an order memorializing the trial court's actual decision on the motion to confirm settlement; rather, it contains only the July 20, 2012



order, mentioned previously, which denied the motion for reconsideration. Neither does the addendum contain an order dismissing the Anadarko defendants from this case. While such a planned dismissal was discussed during the May 2, 2012 hearing, there is no order in the addendum demonstrating that such a dismissal was actually accomplished. Finally, there are no orders in the addendum resolving the claims and cross-claims concerning the defendant/cross-defendant Upland Industrial Development Company, or an order dismissing it from the case. It is not even clear from the abstract and addendum what role, if any, Upland has played in this matter.

The notice of appeal filed by Stephens Production Company asserts that it is appealing from “the Order on Plaintiffs’ Motion to Confirm Settlement and the Amended Motion to Confirm Settlement entered in this case on July 18, 2012 and the Order entered on July 18, 2012 on Plaintiffs’ Motion for Attorney’s Fee.” There is not a Rule 54(b) certificate in the addendum and the notice of appeal does not contain a statement pursuant to Rule 3(e)(vi) of the Arkansas Rules of Appellate Procedure—Civil.

Thus, at a minimum, the addendum submitted in this case does not contain the July 18, 2012 order confirming the settlement, one of the two orders from which Stephens Production Company purportedly brings this appeal. The Blackards did not provide a supplemental addendum either. Without this order before us, we have nothing to review. More importantly, without it, and because of the other possible problems noted previously, we are not even able to determine whether we have jurisdiction to hear this appeal.



We therefore order Stephens Production Company to file a supplemental addendum containing, at a minimum, the order giving rise to this appeal, and any other essential documents from the record in this case by which we can confirm our jurisdiction, understand the case, and decide the issues on appeal. We encourage Stephens Production Company to review carefully the rules pertaining to appeals to this court before submitting its supplemental addendum.

Rebriefing ordered.

WALMSLEY and WHITEAKER, JJ., agree.

*Hayes, Alford & Johnson, PLLC*, by: *Joel D. Johnson*, for appellant.

*Lonnie C. Turner*, and *Stephen C. Gardner, P.A.*, by: *Stephen C. Gardner*, for appellees.