

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-12-1035

CHESAPEAKE EXPLORATION, LLC
APPELLANT

V.

THOMAS WHILLOCK AND GAYLA
WHILLOCK
APPELLEES

Opinion Delivered May 22, 2013

APPEAL FROM THE VAN BUREN
COUNTY CIRCUIT COURT
[NO. CV-10-37]

HONORABLE MICHAEL A.
MAGGIO, JUDGE

REBRIEFING ORDERED

RITA W. GRUBER, Judge

Appellant, Chesapeake Exploration, LLC, appeals from a summary judgment and a subsequent clarification order that dismissed its claims for breach of warranty and unjust enrichment against appellees, Thomas and Gayla Whillock. The Whillocks cross-appeal from the dismissal of their counterclaim against Chesapeake. We order rebriefing due to defects in Chesapeake's abstract and addendum.¹

Chesapeake and the Whillocks filed cross-motions for summary judgment on the issue of whether the Whillocks were required to return a \$120,000 bonus paid to them by Chesapeake in connection with an oil-and-gas lease. In their motions or responses, each party attached excerpts from the deposition of Thomas Whillock as an exhibit. On appeal, those excerpts appear in Chesapeake's addendum and are cited by both Chesapeake and the

¹We previously dismissed Chesapeake's appeal for lack of a final order. *Chesapeake Exploration, LLC v. Whillock*, 2012 Ark. App. 397. The parties have now obtained a final order from the circuit court.



Whillocks in their arguments.

Chesapeake's inclusion of the deposition transcripts in its addendum rather than its abstract violates our briefing rules. If a transcript of a deposition is an exhibit to a motion or related paper, the material parts of the transcript shall be abstracted, not included in the addendum. Ark. Sup. Ct. R. 4-2(a)(5)(A) & 4-2(a)(8)(A)(i) (2012). We order rebriefing to correct this defect. See *Gentry v. Robinson*, 2009 Ark. 345, 322 S.W.3d 498 (per curiam); *Drake v. Sheridan Sch. Dist.*, 2012 Ark. App. 531; *Lancaster v. Reiger*, 2010 Ark. App. 437.

Chesapeake has fifteen days from the date of this order to file a substituted brief, abstract, and addendum that complies with our rules. Ark. Sup. Ct. R. 4-2(b)(3) (2012). Failure to do so within the prescribed time may result in affirmance. *Id.* After service of the substituted brief, abstract, and addendum, the Whillocks shall have the opportunity to file a substituted responsive brief within the time prescribed by this court.

We encourage Chesapeake, prior to filing its substituted brief, abstract, and addendum, to review our rules to ensure that no additional deficiencies are present. *Gentry*, 2009 Ark. 345, at 6, 322 S.W.3d at 501.

Rebriefing ordered.

GLOVER and VAUGHT, JJ., agree.

Danielson Law Firm, PLLC, by: *Erik P. Danielson*, for appellant.

Morgan Law Firm, P.A., by: *M. Edward Morgan*, for appellees and cross-appellants.