

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-754

JOHN H. GOLD, JR.

APPELLANT

V.

BIRD E. VINES

APPELLEE

Opinion Delivered February 2, 2011

APPEAL FROM THE SCOTT COUNTY
CIRCUIT COURT
[No. CIV-2007-76]

HONORABLE DAVID H.
McCORMICK, JUDGE

REBRIEFING ORDERED

LARRY D. VAUGHT, Chief Judge

This case concerns a dispute over a real-estate transaction involving appellant John H. Gold and appellee Bird E. Vines. Gold sued Vines alleging breach of a contract for the sale and purchase of real property and sought equitable remedies and specific performance. Gold's petition was dismissed by way of Vines's motion for summary judgment. On appeal, Gold asserts that there remains a genuine issue of material fact as to whether he had defaulted in the land-sale agreement due to delinquent payments. However, his brief does not contain an abstract of essential deposition testimony. For this reason, we order rebriefing.

Following discovery, and the review of deposition testimony from each of the concerned parties, the circuit court granted Vines's motion for summary judgment and denied Gold's subsequent request to set aside that order. Gold now appeals from the grant of summary judgment. However, he failed to abstract the deposition testimony relied upon in support of and

in opposition to the motion. The briefs in this case were filed after January 1, 2010, the effective date of *In re Arkansas Supreme Court and Court of Appeals Rules 4-1, 4-2, 4-3, 4-4, 4-7, and 6-9*. Ark. Sup. Ct. R. 4-2(a)(5) (2010). The current rules require an abstract of deposition testimony. Our case law dictates, when parties rely on depositions to support their respective positions, an abstract is essential to the understanding of the case. *Gentry v. Robinson*, 2009 Ark. 345. And the failure to abstract that testimony is a flagrant violation of our rules. *Hunt v. Entergy Ark., Inc.*, 2010 Ark. App. 351.

As such, we order Gold to file a substituted brief that complies with our rules. Ark. Sup. Ct. R. 4-2(b)(3) (2009) (allowing parties who file a deficient brief an opportunity to file a conforming brief). The substituted brief, abstract, and addendum shall be due fifteen days from the date of entry of this order. We encourage appellate counsel to review the supreme court's per curiam, *In re Arkansas Supreme Court and Court of Appeals Rules 4-1, 4-2, 4-3, 4-4, 4-7, and 6-9*, to assure that the substituted brief complies with the new rules and to ensure that no additional deficiencies are present. After service of the substituted abstract, brief, and addendum, Vines shall have an opportunity to revise or supplement his brief in the time prescribed by the court. If Gold fails to file a compliant brief within the prescribed time, the grant of summary judgment may be affirmed for noncompliance with our rules.

Rebriefing ordered.

GRUBER and ABRAMSON, JJ., agree.