

Cite as 2018 Ark. App. 107

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CV-17-497

JIM A. CARTER, JR., LOGGING, LLC,  
AND JAMES A. CARTER, JR.  
APPELLANTS

V.

FIRST NATIONAL BANK OF  
CROSSETT  
APPELLEE

**Opinion Delivered:** February 7, 2018

APPEAL FROM THE ASHLEY  
COUNTY CIRCUIT COURT  
[NO. 02CV-13-78]

HONORABLE STEVEN RAY  
PORCH, JUDGE

REMANDED TO SETTLE AND  
SUPPLEMENT THE RECORD;  
REBRIEFING ORDERED

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## WAYMOND M. BROWN, Judge

Appellants Jim A. Carter, Jr., Logging, LLC, and James A. Carter, Jr., appeal the February 17, 2017 order of the Ashley County Circuit Court granting appellee First National Bank of Crossett (FNBC) summary judgment. Appellants maintain that appellee breached the peace when it repossessed equipment from appellants and that the decision of the bankruptcy court was not sufficient to preclude appellants from presenting the issue of damages to a jury. We are unable to reach the merits of appellants' arguments due to multiple problems with the record, abstract, brief, and addendum. Therefore, we remand to settle and supplement the record and order rebriefing.

Both parties moved for summary judgment. A hearing on the competing motions took place on January 20, 2017. The court's order granting appellee's motion for summary

judgment and dismissing appellants' complaint with prejudice was filed on February 17, 2017. In that order, the court stated, "[a]fter hearing argument of counsel, the Court took a recess to consider the argument of counsel and the motions and briefs filed by both parties." However, when appellants filed their notice of appeal, they specifically indicated that since no testimony had been taken at the hearing, no transcript was requested. Therefore, we remand this case to settle and supplement the record to include the transcript from the hearing conducted on January 20, 2017.<sup>1</sup> Counsel shall have thirty days in which to settle and supplement the record.

Our rules require that the parties include in the abstract and addendum everything that is essential to our understanding and ability to decide the issues on appeal.<sup>2</sup> Here, appellants abstracted portions of the hearings before the bankruptcy court; however, they failed to abstract all material portions of the transcript from the April 16, 2013 hearing, including the court's oral ruling that was incorporated into its April 22, 2013 order, denying appellants' motion for sanctions. Appellants need to ensure that they abstract all material information from that hearing. Appellants also failed to abstract the arguments of counsel from that hearing. Additionally, when the record is settled and supplemented to include the January 20, 2017 hearing, appellants will also need to include the material portions of that hearing in their abstract. Appellants also mention appeals made from the bankruptcy

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<sup>1</sup>See Ark. R. App. P.–Civ. 6(e) (“If anything material to either party is omitted from the record by error or accident or is misstated therein, . . . the appellate court . . . on its own initiative, may direct that the omission . . . be corrected, and if necessary, that a supplemental record be certified and transmitted.”).

<sup>2</sup>See Ark. Sup. Ct. R. 4-2(a)(5), (8) (2017).

court's 2013 decision but fail to include those appellate decisions in the addendum. This, too, will need to be corrected.

Additionally, appellants fail to include page references in the argument section of their brief. Our rules provide that references in the argument portion of the briefs to material found in the abstract and addendum shall be followed by a reference to the page number of the abstract or addendum at which such material may be found.<sup>3</sup> Here, appellants have included only one page reference in their entire twelve-page argument.

Due to the numerous deficiencies, appellants will have fifteen days after the record is settled and supplemented to file a substituted abstract, brief, and addendum.<sup>4</sup> We encourage appellants to carefully and thoroughly review our rules to ensure that no additional deficiencies are present, and we caution that if they fail to file a complying brief, abstract, and addendum within the prescribed time, the judgment may be affirmed for noncompliance with the rules.<sup>5</sup>

Remanded to settle and supplement the record; rebriefing ordered.

GLADWIN and WHITEAKER, JJ., agree.

*Law Office of Billy J. Hubbell*, by: *Billy J. Hubbell*, for appellants.

*Streetman, Meeks & Gibson, PLLC*, by: *Thomas S. Streetman*, for appellee.

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<sup>3</sup>Ark. Sup. Ct. R. 4-2(a)(7).

<sup>4</sup>Ark. Sup. Ct. R. 4-2(b)(3).

<sup>5</sup>*Id.*