

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA08-871

LARRY JOHNSON

APPELLANT

V.

ALCOHOL BEVERAGE CONTROL
DIVISION

APPELLEES

Opinion Delivered MARCH 18, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CV2007-2819]

HONORABLE WILLARD
PROCTOR, JUDGE

REBRIEFING ORDERED

ROBERT J. GLADWIN, Judge

Appellant Larry Johnson appeals from the Pulaski County Circuit Court's April 4, 2004 order dismissing his petition for appeal, in which he sought review of the February 21, 2007 decision of appellee Alcohol Beverage Control Division. In that decision, appellee denied appellant's application to transfer the location of appellant's retail liquor store. We do not reach the merits of appellant's case because appellant has submitted a brief with an abstract that is insufficient under Ark. Sup. Ct. R. 4-2(a)(5).

Although failure to abstract materials essential to the understanding of an argument on appeal has in the past been considered a bar to consideration of the merits of the argument, this court must now allow rebriefing to cure deficiencies in the abstract or Addendum. See *Arkansas Dep't of Human Servs. v. Collier*, 351 Ark. 380, 92 S.W.3d 683 (2002). Supreme

Court Rule 4-2(b)(3) explains the procedure to be followed when an appellant fails to supply this court with a sufficient brief. The rule provides:

Whether or not the appellee has called attention to deficiencies in the appellant's abstract or Addendum, the Court may address the question at any time. If the Court finds the abstract or Addendum to be deficient such that the Court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the Court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has fifteen days within which to file a substituted abstract, Addendum, and brief, at his or her own expense, to conform to Rule 4-2(a)(5) and (8). Mere modifications of the original brief by the appellant, as by interlineation, will not be accepted by the Clerk. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to revise or supplement the brief, at the expense of the appellant or the appellant's counsel, as the Court may direct. If after the opportunity to cure the deficiencies, the appellant fails to file a complying abstract, Addendum and brief within the prescribed time, the judgment or decree may be affirmed for noncompliance with the Rule.

See also City of Dover v. City of Russellville, 351 Ark. 557, 95 S.W.3d 808 (2003).

Rather than creating an impartial condensation of the relevant testimony and colloquies as required by Ark. Sup. Ct. R. 4-2(a)(5), appellant's abstract of the testimony is not in the first person and consists simply of seventy-one pages of excerpts of questions and answers taken from various parts of the record and both counsel's closing arguments. As such, the abstract fails to meet the requirement of consisting of an impartial condensation of only the material parts of the pleadings, proceedings, facts, documents, and other materials in the transcript necessary to an understanding of the question presented to the court for decision as required by Ark. Sup. Ct. R. 4-2(a)(5). This court has stated that an abstract that is a mere reprint of the transcript, or substantial parts of it, may preclude this court from reaching the merits of an appeal. *See Muldrow v. Douglass*, 316 Ark. 86, 870 S.W.2d 736 (1994).

We hereby order appellant to submit a substituted brief that contains a revised abstract in accordance with our rules. Appellant's counsel is directed to file a substituted brief correcting the deficiencies in the abstract within fifteen days of this opinion. Thereafter, appellee will have ten days in which it may avail itself of the opportunity to revise its brief.

Rebriefing ordered.

PITTMAN and HENRY, JJ., agree.