

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA09-1024

GEORGE REPKING, KELLY REPKING
and ESTATE of CHRISTINA SPRINGS
APPELLANTS

V.

BRAD LOKEY and RANDY REED,
APPELLEES

Opinion Delivered MARCH 31, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[NO. CIV-08-92]

HONORABLE JAMES O. COX,
JUDGE

REBRIEFING ORDERED

KAREN R. BAKER, Judge

Appellants George Repking, et al. challenge the trial court's entry of summary judgment that dismissed their complaint which asserted violations of their civil rights pursuant to state and federal law. We must order rebriefing because appellants' abstract is deficient.

The briefs in this case were filed before 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*, 2009 Ark. 534 (per curiam). Therefore, this appeal is guided by the former rules. Arkansas Supreme Court Rule 4-2(a)(8) (2009) provided that an addendum include, among other things, "any other relevant pleadings, documents, or exhibits essential to an understanding of the case and the Court's jurisdiction on appeal." Rule 4-2(a)(5) of the Arkansas Rules of the Supreme Court and Court of Appeals provides in pertinent part:

Abstract. The appellant's abstract or abridgement of the transcript should consist of an impartial condensation, without comment or emphasis, of only such material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the Court for decision. . . . Depositions shall be abstracted in a similar fashion.

Appellants in this case challenge the trial court's grant of appellees' motion for summary judgment. Ordinarily, upon reviewing a court's decision on a summary-judgment motion, we would examine the record to determine if genuine issues of material fact exist. *Martin v. Bobo*, 104 Ark. App. 330, 332, 292 S.W.3d 865, 868 (2009). Appellants in this case have provided an extensive addendum containing most of the record in this case. However, the abstract contains only one page summarizing the deposition testimony of appellee Brad Lokey. In *Middleton v. Lockhart*, 364 Ark. 32, 216 S.W.3d 98 (2005), our supreme court held:

It is well established that the abstract is the record for purposes of appeal, and the appealing party has the burden to provide a sufficient record and abstract. . . . This court will not reach the merits of an issue when the documents or proceedings that are necessary for an understanding of the issue are not abstracted.

Id. at 37, 216 S.W.3d at 101 (internal citations omitted); see *Vaughn v. Bates*, 2010 Ark. App. 98, 379 S.W.3d 1 (citing *Middleton*, *supra*, affirming in part stating that the record does not contain any pleading, motion, or argument that shows that appellant objected to or opposed in any way any order entered by the circuit court).

If we find that an abstract is so deficient that we cannot reach the merits of the case, we afford the appellant an opportunity to cure the deficiencies by filing a substituted brief that conforms to the requirements of the abstracting rule. Ark. Sup. Ct. R. 4-2(b)(3). Appellants'

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counsel is directed to file a substituted brief to include an abstract of all the material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the court for decision. The abstract should also disclose which exhibits were introduced into evidence and whether the exhibits were introduced with or without objection. The exhibits must also appear in the addendum in accordance with Rule 4-2. Appellants' counsel has fifteen days to file the substituted brief. After service of the substituted brief, appellee shall have an opportunity to file a responsive brief in the time prescribed by our clerk, or appellee may rely on the brief previously filed in this appeal.

Rebriefing ordered.

PITTMAN and HENRY, JJ., agree.