

## ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA09-359

CITY OF LITTLE ROCK

APPELLANT

V.

McGEORGE CONTRACTING CO.,  
INC.

APPELLEE

**Opinion Delivered** May 5, 2010

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. CV07-3250]

HONORABLE MARY MCGOWAN,  
JUDGE

REBRIEFING ORDERED

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### WAYMOND M. BROWN, Judge

McGeorge Contracting Co., Inc., filed a complaint against the City of Little Rock and the Housing Authority for the City of Little Rock (LRHA) in an effort to gain access to Highway 365. After dismissing the suit twice for want of prosecution, the Pulaski County Circuit Court entered an order vacating the dismissal, allowing the suit to proceed. The City has appealed from the order, challenging the circuit court's jurisdiction to enter the order and asserting that McGeorge's suit is barred by res judicata. Unfortunately, the City's brief lacks documents essential to an understanding of the case. Thus, we order rebriefing.

In November 2002, McGeorge filed a complaint against LRHA, but that complaint was dismissed for want of prosecution in December 2003. It filed a second complaint against LRHA, alleging the same facts, in March 2007. In July 2008, this complaint was also dismissed

for want of prosecution. Despite this dismissal, McGeorge filed an amended complaint in November 2008, adding the City as a defendant. The City responded by filing a motion to dismiss, alleging that the complaint had already been dismissed. It also asserted that the doctrine of res judicata barred McGeorge from continuing the suit.

On December 8, 2008, McGeorge moved to vacate the July 2008 dismissal. Attached to the motion were affidavits from counsel for McGeorge and for LRHA, both stating that they did not receive prior written notice of the July 2008 dismissal. Three days later, the circuit court vacated the July 2008 dismissal. The City did not respond to the motion until December 22, 2008. The City then filed a notice of appeal to this court.

We order rebriefing, as the City's brief fails to comply with the rules of our court. The briefs 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*.<sup>1</sup> Therefore, this appeal is governed by the former rules. Under those rules, an addendum must contain, among other things, "any other relevant pleadings, documents, or exhibits essential to an understanding of the case."<sup>2</sup> The City's addendum contains the complaints, amended complaints, dismissal orders, and the order vacating the July 2008 dismissal. But it does not contain the City's motion to dismiss, McGeorge's motion to vacate the second dismissal, or the City's response to McGeorge's motion. These documents are essential to determining whether the City's arguments are

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<sup>1</sup> 2009 Ark. 534 (per curiam).

<sup>2</sup> Ark. Sup. Ct. R. 4-2(a)(8) (2009).

preserved for appellate review. In addition, the City has also violated the proscription against including documents outside of the record in the addendum.<sup>3</sup> We cannot review this appeal while these deficiencies are present.<sup>4</sup>

We order the City to file a substituted brief that complies with our rules.<sup>5</sup> The substituted brief, abstract, and addendum shall be submitted within fifteen days from the date of entry of this order. We encourage appellate counsel, prior to filing the substituted brief, to review *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, McGeorge shall have an opportunity to revise or supplement its brief. If the City fails to file a compliant brief within the prescribed time, the order vacating the second dismissal may be affirmed for noncompliance with our rules.

Rebriefing ordered.

GLADWIN and HENRY, JJ., agree.

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<sup>3</sup> See *Union Pac. R.R. Co. v. Barber*, 356 Ark. 268, 149 S.W.3d 325 (2004) (refusing to consider a document in the addendum when it was not in the record).

<sup>4</sup> See *Gentry v. Robinson*, 2009 Ark. 345, 322 S.W.3d 498 (per curiam).

<sup>5</sup> Ark. Sup. Ct. R. 4-2(b)(3) (2009) (allowing parties who file a deficient brief an opportunity to file a conforming brief).