

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-757

PATRICIA MILNER, RANDALL
BROWN, and DONNA DONALDSON
APPELLANTS

V.

REX LUTTRELL, M.D.
APPELLEE

Opinion Delivered May 12, 2010

APPEAL FROM THE DALLAS
COUNTY CIRCUIT COURT
[NO. CIV-01-26]

HONORABLE DAVID F. GUTHRIE,
JUDGE

REBRIEFING ORDERED

JOSEPHINE LINKER HART, Judge

In this medical-negligence case, we order rebriefing for failure to comply with our rules governing an appellant’s addendum.

Mike and Patricia Milner sued Rex Luttrell, M.D., St. Vincent Infirmiry Medical Center, and First Initiatives Insurance, Ltd., d/b/a Catholic Health Initiatives, all of whom appeared and filed answers.¹ During the case, the Milners nonsuited their claim against St. Vincent and First Initiatives (collectively “St. Vincent”), and Mike Milner nonsuited his claim as a plaintiff. All that remained was Patricia Milner’s claim against Dr. Luttrell, which proceeded to a jury trial. The jury rendered a defendant’s verdict, and the circuit court

¹The Milners also sued several John Doe defendants, but those defendants were not served and are no longer considered parties. *See* Ark. R. Civ. P. 54(b)(5).

entered judgment accordingly. The court later denied Mrs. Milner's posttrial motions, leading to this appeal.² Because appellants' addendum does not contain the order dismissing St. Vincent or the order dismissing Mike Milner's claims, we order rebriefing.

Appellants' brief was 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. Those rules provide that an appellant's addendum must include "true and legible photocopies of the order . . . from which the appeal is taken, along with any other relevant pleadings, documents, or exhibits essential to an understanding of the case *and the Court's jurisdiction on appeal.*" Ark. Sup. Ct. R. 4-2(a)(8) (emphasis added). Our appellate jurisdiction depends upon the entry of a final judgment. *Epting v. Precision Paint & Glass, Inc.*, 353 Ark. 84, 89, 110 S.W.3d 747, 749 (2003). Consequently, an appellant's addendum must demonstrate finality. Here, we cannot tell from appellants' addendum whether we have jurisdiction of this appeal because the addendum does not include the orders showing that the circuit court disposed of all claims by and against all parties. While those orders are in the record, our supreme court has announced a preference for rebriefing when an addendum is missing key documents. *Dachs v. Hendrix*, 2009 Ark. 322, 320 S.W.3d 645; *Crenshaw v. Ark. Warehouse, Inc.*, 2010 Ark. App. 287. We therefore order appellants to file, within fifteen days from the date

² Patricia Milner died before the lawsuit was concluded. The circuit court substituted her two adult children, Randall Brown and Donna Donaldson, as plaintiffs and designated them as special administrators to prosecute her claim.

Cite as 2010 Ark. App. 409

of this order, a substituted brief with an addendum that contains the order dismissing St. Vincent and the order dismissing Mike Milner's claims. *See* Ark. Sup. Ct. R. 4-2(b)(3). If appellants do not file a substituted brief with a complying addendum within the time prescribed, the judgment may be affirmed for noncompliance with Rule 4-2(a)(8). We also encourage appellants' counsel, prior to filing the substituted brief, to review our rules regarding the contents of an abstract and addendum to ensure that no additional deficiencies are present.

Rebriefing ordered.

PITTMAN and BAKER, JJ., agree.