Cite as 2010 Ark. App. 572

# ARKANSAS COURT OF APPEALS

DIVISION III
**No.** CA 10-82

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| ROBERT & DONNA RIDENOURE, SCOTTY & TIFFANY RIDENOURE<br><br>APPELLANTS<br><br>V.<br><br>CARL D. BALL, JR., and MARLYS ST. JOHN-BALL<br><br>APPELLEES | **Opinion Delivered** September 1, 2010<br><br>APPEAL FROM THE MADISON COUNTY CIRCUIT COURT [NO. CV-2008-190-6]<br><br>HONORABLE MARK LINDSAY, JUDGE<br><br>REBRIEFING ORDERED |

**WAYMOND M. BROWN, Judge**

This is an appeal from an order granting the Balls a prescriptive easement over the Ridenoures' property in Madison County. The Ridenoures present three arguments to this court: (1) the Balls failed to establish a prescriptive easement in light of evidence showing permissive use; (2) assuming that an easement had been established, said easement was abandoned; and (3) assuming that an easement had been establish and not abandoned, the circuit court's order grants an easement that is wider than the evidence of adverse use. We do not reach the merits of this appeal, as the Ridenoures' brief contains a deficient abstract. Instead, we order rebriefing.

At a three-day bench trial, the circuit court considered whether the Balls had the right to use a private road on the Ridenoures' property. After hearing testimony and arguments from counsel, the circuit court ruled from the bench that the Balls had established a right to use the

private road and that they did not abandon that right. The court ordered the parties to prepare an order within thirty days. After that time elapsed without an order, the court ordered the parties to show cause why an order had not been produced. At the show-cause hearing, the parties explained that they could not agree on the width of the easement. The court resolved the matter and entered an order the following week. This appeal followed.

As previously stated, the Ridenoures' brief contains a deficient abstract. Arkansas Supreme Court Rule 4-2(a)(5) requires appellants to abstract the material parts of all transcripts in the record. Information is material if it is essential to confirm the appellate court's jurisdiction, to understand the case, and to decide the issues on appeal.[1] And material information may be found, among other places, in the bench rulings of the court.[2] At a minimum, we must know what the circuit court ruled before we can possibly determine any error.[3] While the trial testimony is abstracted, the bench rulings are not. The Ridenoures provide transcripts of the bench rulings in their addendum, but this is no substitute for an abstract.[4] The decree granting the easement provides some information helpful to the understanding of the first two points on appeal, but the abstract and final order are deficient when it comes to understanding the third point on appeal. Without that critical abstract, we are unable to review this case.

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[1] Ark. Sup. Ct. R. 4-2(a)(5).

[2] Ark. Sup. Ct. R. 4-2(a)(5)(A).

[3] *Edwards v. Neuse*, 312 Ark. 302, 849 S.W.2d 479 (1993).

[4] *City of Dardanelle v. City of Russellville*, 371 Ark. 13, 262 S.W.3d 615 (2007).

Because the Ridenoures have included the transcript of the court's ruling in their addendum, this deficiency may seem insignificant. But when concurring with our supreme court's per curiam *In re Arkansas Supreme Court and Court of Appeals Rules 4-1, 4-2, 4-3, 4-4, 4-7, and 6-9*, Justice Danielson wrote, "Without predictable and consistent enforcement, a rule, no matter how clear, will not be consistently followed. I am hopeful that the amendments to the rule are not the only change and that enforcement is made a high priority."[5] Even before promulgating the new rules, our supreme court established a preference toward rebriefing when deficiencies were present. In *Roberts v. Roberts*, our supreme court recognized:

> While it may cause additional delay and expense to the appellant, this court does not order rebriefing either thoughtlessly or needlessly. To the contrary, we do so *only* after considered thought, analysis, and examination of both the briefs and record on appeal. We do so, not to waste the time of counsel or the money of litigants, but to ensure that we can achieve the utmost of judicial economy and efficiency in deciding the appeals and, more importantly, to ensure that every litigant before this court receives the justice he or she seeks and deserves. For that reason, this court, as well as the court of appeals, should, and must, be consistent in our application of our rules to *every case and every litigant*, and both courts must enforce those rules in a consistent fashion to achieve the order and predictability that the appellate process requires.[6]

To this end, we order the Ridenoures to file a substituted brief that complies with our rules.[7] 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

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[5] 2009 Ark. 534, at 10–11 (Danielson, J., concurring).

[6] 2009 Ark. 306, at 3 n.2, 319 S.W.3d 234, 235 n.2 (per curiam). *See also*, *e.g.*, *Bryan v. City of Cotter*, 2009 Ark. 172, 303 S.W.3d 64.

[7] Ark. Sup. Ct. R. 4-2(b)(3), (c)(2) (allowing parties who file a deficient brief an opportunity to file a conforming brief).

brief, to review the rules and to ensure that no other deficiencies are present. After service of the substituted abstract, brief, and addendum, the Balls shall have an opportunity to revise or supplement their brief in the time prescribed by the court. If the Ridenoures fail to file a compliant brief within the prescribed time, the order may be affirmed for noncompliance with our rules.

Rebriefing ordered.

VAUGHT, C.J., and GRUBER, J., agree.