

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-18-150

FORREST WAYNE DAILY AND
ERIN MARIE DAILY

APPELLANTS

V.

JUSTIN STANLEY AND TAYLOR
SCHMIDT

APPELLEES

Opinion Delivered: September 26, 2018

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
GREENWOOD DISTRICT
[NO. 66PR-17-39-G]

HONORABLE ANNIE
HENDRICKS, JUDGE

REBRIEFING ORDERED

WAYMOND M. BROWN, Judge

Appellants appeal from the circuit court’s order denying their petition to adopt B.D., born 03/09/17, and granting appellee Justin Stanley’s petition for custody, among other things.¹ On appeal, appellants argue that (1) Stanley failed to meet any of the requirements of Arkansas Code Annotated section 9-9-206 so that the circuit court erred in finding that his consent to adoption was required, and (2) even if Stanley’s registering with the putative father registry is a “similar acknowledgement of paternity” under Arkansas Code Annotated section 9-10-120(a), the circuit court erred in finding that Stanley met his burden under Arkansas Code Annotated section 9-9-207. We do not reach the merits of appellants’ arguments and order rebriefing.

¹Appellee Taylor Schmidt, whose parental rights were terminated by the State of Indiana on March 13, 2017, is not a party to this appeal.

Arkansas Rule of Appellate Procedure—Civil 6(e) states that if anything material to either party is omitted from the record by error or accident, the appellate court, on its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary, that a supplemental record be certified and transmitted. Arkansas Supreme Court Rule 4-2 states that “[t]he addendum shall contain true and legible copies of the non-transcript documents in the record on appeal that are essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal.” Arkansas Supreme Court Rule 4-2(8)(A) states that the addendum shall include “all motions (including posttrial and postjudgment motions), responses, replies, exhibits, and related briefs, concerning the order, judgment, or ruling challenged on appeal.”

Numerous documents are missing from the addendum. Appellee has attempted to correct the deficiencies by submitting a supplemental addendum, but it is not sufficient. Of the documents missing, we specifically note the absence of Stanley’s April 17, 2017 motion to dismiss and appellants’ September 20, 2017 motion for summary judgment and separately-filed brief in support as well as the parties’ responses to the same.² The aforementioned documents all raised the issue now before this court on appeal. As submitted, without these documents in the brief, it appears as if the issues on appeal were not raised below. Also missing from the addendum is the Indiana Hamilton Superior Court’s March 13, 2017 order, which permitted appellants to obtain physical custody of B.D. Without this document, the brief does not detail how appellants—who are otherwise strangers to the

²Also missing are Stanley’s paternity petition, which was filed on March 8, 2017, prior to B.D.’s birth; the petition and subsequent order to terminate the parental rights of B.D.’s mother, Schmidt; and the filing of appellants’ petition for adoption.

biological parents of B.D.—came to have physical custody of B.D. in Arkansas, though he was born in Indiana. We also are missing documents which were attached as exhibits to other necessary documents, for instance, the results of the paternity test, which determined that Stanley is the father of B.D.

Arkansas Supreme Court Rule 4-2(a)(5) states “[t]he appellant shall create an abstract of the material parts of all the transcripts (stenographically reported material) in the record. Information in a transcript is material if the information is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal.”³ The abstract shall be an impartial condensation, without comment or emphasis, of the transcript (stenographically reported material) with no more than one page of a transcript shall be abstracted without giving a record page reference.⁴

A review of the transcript shows that appellants have given a bare-bones abstract of testimony in some places and have chosen to leave out testimony and arguments altogether in other places. For instance, with regard to the parties’ arguments made before the Arkansas circuit court on their motion for summary judgment, the majority of appellant’s argument is not abstracted; it is same with the argument of appellee. Furthermore, while submitted in Stanley’s supplemental abstract, we note that neither of the transcripts from the termination of parental rights hearing nor the paternity hearing in Indiana—in both of which appellant was represented by counsel—are in the appellants’ abstract despite being included in the

³(2016).

⁴Ark. Sup. Ct. R. 4-2(a)(5)(B).

record.⁵ Arkansas Supreme Court Rule 4-2(a)(5)(A) states “[a]ll material parts of all hearing transcripts, trial transcripts, and deposition transcripts must be abstracted, even if they are an exhibit to a motion or other paper.”

Accordingly, appellant shall file a substituted abstract, addendum, and brief curing all above-referenced deficiencies in compliance with Arkansas Supreme Court Rule 4-2. We encourage appellants’ counsel to review Rules 3-3 and 4-2 of the Rules of the Arkansas Supreme Court and Court of Appeals to ensure that the supplemental record and supplemental addendum comply with the rules and that no additional deficiencies are present. This list is not exhaustive.

Rebriefing ordered.

GRUBER, C.J., and WHITEAKER, J., agree.

Wilson & Associates, P.L.L.C., by: *H. Keith Morrison*, for appellants.

Weimar Law Office, by: *DeeAnna Weimar*, for appellee.

⁵A copy of the paternity transcript appears as an exhibit to Stanley’s brief in support of his motion for summary judgment, a document which is missing from the addendum altogether.