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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-18-687

Opinion Delivered: February 20, 2019

MICHAEL BOYD APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FOURTH DIVISION [NO. 60CR-13-3549]
V.	HONORABLE HERBERT WRIGHT, JUDGE
STATE OF ARKANSAS APPELLEE	REMANDED TO SETTLE AND SUPPLEMENT THE RECORD

DAVID M. GLOVER, Judge

Michael Boyd brings this pro se appeal from the June 12, 2018 order, which dismissed his motion for return of seized property to him and instead ordered return of the property to the Bank of the Ozarks. We remand this case to the trial court for settlement and supplementation of the record.

In his notice of appeal, Boyd designated the entire record. However, several references are made to a May 29, 2018 hearing on his motion for return of seized property that is not part of the record filed with us. For example, in a supplemental addendum provided by the State, which contains page 8 of the trial court's docket and states in part: "5-29-18 08:30:00 OTHER HEARING"; Paragraph 4 of the June 12, 2018 order providing, "4. That *after hearing evidence*, this Court has determined that cash should be returned to its lawful owner, the Bank of the Ozarks" (emphasis added); and the State's

statement of the case, which provides "A hearing was held on Appellant's motion on May 29, 2018."

If there was indeed a May 29, 2018 hearing, it is not included in the record nor in the abstract portion of Boyd's brief. Without a record of that hearing, we cannot review the trial court's decision to deny Boyd's motion. The State argues in its brief that the failure to include in the record on appeal the May 29, 2018 hearing transcript renders the appeal fatally defective and requires us to affirm. We disagree.

Arkansas Rule of Appellate Procedure–Civil 6(b) (made applicable to criminal cases by Ark. R. App. P.–Crim. 4(a)) provides in part, "If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or contrary thereto, he shall include in the record a transcript of all evidence relevant to such finding or conclusion." Rule 6(e) of the Arkansas Rules of Appellate Procedure–Civil further provides:

> *Correction or modification of the record.* If any difference arises as to whether the record truly discloses what occurred in the circuit court, the difference shall be submitted by motion to, and settled by, that court and the record shall be made to conform to the truth. *If anything material to either party is omitted from the record by error or accident* or is misstated therein, the parties by stipulation, or the circuit court before the record is transmitted to the appellate court, or *the appellate court* on motion made no later than 30 days after the appellee's brief is filed in the appellate court, or *on its own initiative, may direct that the omission or misstatement be corrected, and if necessary, that a supplemental record be certified and transmitted.* All other questions as to form and content of the record shall be presented to the appellate court. No correction or modification of the record shall be made without prior notice to all parties.

(Emphasis added.) Because Boyd did designate the entire record for his appeal, we remand this case to the trial court for settlement and supplementation of the record to determine if such a hearing was held and, if it was, to then supplement the record to include the May 29, 2018 hearing and any evidence presented at the May 29 hearing. The record is due

thirty (30) days from the date of this opinion. Boyd will then have thirty (30) days to supplement his abstract and addendum, and to rebrief if necessary[1], and the State may then rely on its previously filed brief or revise it.

Remanded to settle and supplement the record.

HARRISON and KLAPPENBACH, JJ., agree.

Michael L. Boyd, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Rachel Kemp*, Ass't Att'y Gen., for appellee.

[1]On January 25, 2019, Boyd filed a motion in our court requesting the status of his appeal. The motion is denied because it has now been rendered moot with the issuance of this opinion.