

Cite as 2019 Ark. App. 310

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-18-344

DELMAR MANAGEMENT, INC.

APPELLANT

V.

GEORGE MACKEY; ARKANSAS
DIRECT AUTO, LLC, D/B/A
ARKANSAS DIRECT AUTO SALES;
AND JOSHUA WHITE

APPELLEES

Opinion Delivered May 29, 2019

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. 23CV-13-873]

HONORABLE CHRIS CARNAHAN,
JUDGE

AFFIRMED

N. MARK KLAPPENBACH, Judge

This appeal returns to us after we ordered supplementation of the record and rebriefing in an opinion delivered on December 5, 2018. *Delmar Mgmt., Inc. v. Mackey*, 2018 Ark. App. 593. The appeal centers on Delmar’s contention that the circuit court erroneously denied its motion for attorney’s fees. Delmar failed to comply with our previous order to file a substituted abstract, brief, and addendum that includes the omitted necessary material within fifteen days of the supplemental record being filed in violation of Arkansas Supreme Court Rule 4-2. Consequently, we affirm.

To explain, Delmar prevailed before a jury and was awarded \$15,000 in compensatory damages for the wrongful possession of an automobile. The jury did not award Delmar any punitive damages. After trial, Delmar requested, and was granted,

prejudgment interest and costs. Delmar also requested, but was denied, attorney's fees, which Delmar appealed.

Delmar ordered an abbreviated record on appeal that did not include, among several other necessary items, the motion for attorney's fees. Delmar's appellate brief, consequently, lacked multiple items necessary for us to confirm appellate jurisdiction and to address the merits of the appeal.¹ We ordered supplementation of the appellate record pursuant to Arkansas Rule of Appellate Procedure-Civil 6(c) to provide Delmar a reasonable opportunity to supply the delineated deficiencies. We further ordered Delmar to file a substituted abstract, brief, and addendum that included the additional material within fifteen days of the supplemental record being filed in accordance with Ark. Sup. Ct. R. 4-2. Our opinion informed Delmar that "[f]ailure to file an abstract, addendum, and brief in compliance with our rules within the time provided above may result in affirmance for noncompliance. Ark. Sup. Ct. R. 4-2(b)(3)." *Delmar*, 2018 Ark. App. 593, at 3.

Although Delmar filed a supplemental record, Delmar failed to file a substituted abstract, brief, and addendum as ordered. The day before the substituted brief was due, Delmar filed a motion to extend the due date for an additional thirty days, which we denied. Approximately three weeks later, Delmar filed a motion to file a belated substituted brief, which we denied.² As a consequence of Delmar's failure to abide by our order that gave

¹We point out that Delmar's original appellate brief inexplicably contained an abstract of pretrial matters that were wholly immaterial to the issue on appeal.

²Notably, Delmar did not tender a substituted brief contemporaneously with the request to file a belated substituted brief. Delmar instead asked for an extension of approximately three additional weeks.

Delmar an opportunity to comply with the briefing rules, we affirm. *See Meyer v. CDI Contractors, LLC*, 2009 Ark. 304, 318 S.W.3d 87; Ark. Sup. Ct. R. 4-2(b)(3).

Affirmed.

WHITEAKER and VAUGHT, JJ., agree.

Sutter & Gillham, P.L.L.C., by: *Luther Oneal Sutter* and *Lucien Gillham*, for appellant.

Porter Law Firm, by: *Austin Porter Jr.*, for appellee.