

Shelby and Theresa McADAMS and Bob J. McAdams
v. AUTOMOTIVE RENTALS, INC.

94-207

891 S.W.2d 52

Supreme Court of Arkansas
Opinion delivered January 17, 1995
[Rehearings denied February 27, 1995.]

1. APPEAL & ERROR — ABSTRACT FLAGRANTLY DEFICIENT — APPEAL AFFIRMED. — An abstract is to be a condensation of the material parts of the pleadings, proceedings, and other matters contained in the record so that it will give the court an understanding of the points of appeal; here, the appellants' abstract referred to numerous extraneous matters and compiled them in such a way that it was difficult and, in places, impossible, to separate them from the material parts of the record; material parts of the record were, in places, cryptically stated and without headings or spaces to distinguish or separate them; because of the flagrant deficiencies in abstracting, the court was unable to determine even the order from which the appeal was taken; the appeal was affirmed under Rule 4-2 of the Arkansas Supreme Court Rules.
2. APPEAL & ERROR — ARGUMENT RAISED FOR THE FIRST TIME ON APPEAL — ARGUMENT NOT REACHED. — Where there was nothing in either the appellants' abstract or the appellee's supplemental abstract to show that an argument about public policy and fraudulent marriages was made to the chancellor, it appeared that the argument

was being raised for the first time on appeal and so the point was affirmed; an argument cannot be raised for the first time on appeal.

3. APPEAL & ERROR — MATTER NOT RULED ON BY THE TRIAL COURT — APPELLATE COURT DID NOT REACH IT. — Where it was obvious that the matter had not been ruled on by the trial court, the supreme court did not reach it.

Appeal from Pulaski Chancery Court; *Annabelle Clinton Imber*, Chancellor; affirmed in part and dismissed in part.

Thomas J. Pendowski and *B.J. McAdams*, pro se, for appellants.

Eichenbaum, Scott, Miller, Liles & Heister, P.A., by: *James H. Penick, III*, for appellee.

ROBERT H. DUDLEY, Justice. Twin City Bank filed a foreclosure action against B.J. McAdams and other parties that held liens against the encumbered property. The bank asked that its mortgage be decreed first in priority. Automotive Rentals, Inc. is one of the other named defendants. The chancellor granted a decree of foreclosure and ruled that Twin City Bank was first in priority. The mortgage was assigned to Shelby and Theresa McAdams. A sale was ordered, and Shelby and Theresa McAdams purchased the property. After numerous motions, hearings, and rulings, the chancellor entered an order of confirmation. B.J. McAdams and Shelby and Theresa McAdams filed a notice of appeal within thirty days of the order of confirmation.

The chancellor subsequently ruled that Automotive Rentals, Inc. had the next lien in priority. It applied to excess proceeds, if any, resulting from the sale of the property. However, the chancellor also ruled that B.J. McAdams was entitled to claim a homestead exemption against Automotive Rentals, Inc. Automotive Rentals filed a notice of appeal. The style of the case might be misleading; these are two direct appeals by separate defendants in the action filed by Twin City Bank.

We granted Automotive Rentals's motion to consolidate the two separate appeals and determine both of them in this opinion. We dismiss the McAdamses' appeal and affirm Automotive Rentals's appeal.

We dismiss the appeal of B.J. McAdams and Shelby and Theresa McAdams because the deficiencies in their abstract are

so flagrant that a decision is well nigh impossible. *See Haynes v. State*, 313 Ark. 407, 855 S.W.2d 313 (1993). An abstract is to be a condensation of the material parts of the pleadings, proceedings, and other matters contained in the record so that it will give us an understanding of the points of appeal. Ark. Sup. Ct. R. 4-2(a)(6). The McAdamses' abstract refers to numerous extraneous matters and compiles them in such a way that it is difficult and, in places, impossible, to separate them from the material parts of the record. Material parts of the record are, in places, cryptically stated and without headings or spaces to distinguish or separate them. One example of our difficulties caused by the deficiencies is as follows. We have long said that a decree granting foreclosure and placing the court's directive into execution is a final and appealable order. "If it were otherwise, and there were questions about the validity of the sale, prospective bidders might not bid a reasonable amount because there would be a cloud over the matter, and no one wants to buy a lawsuit." *Scherz v. Mundaca Inv. Corp.*, 318 Ark. 595, 597, 886 S.W.2d 631 (1994) (quoting *Alberty v. Wideman*, 312 Ark. 434, 437, 850 S.W.2d 314, 314 (1993)). In addition, an appeal taken from the decree granting foreclosure must be taken within thirty days from the date that order is entered. *See Scherz* at 597, 886 S.W.2d at 631; Ark. R. App. P. 2. The decree confirming the foreclosure sale is a separate, final, and appealable order, and a notice of appeal must be given within thirty days of that decree. In this case, the notice of appeal is abstracted only as "November 29, 1993, joint notice of appeal filed." The notice of appeal must specify the parties taking the appeal. Ark. R. App. P. 3(e). Even assuming all three McAdamses gave the notice, the abstract does not set out the order from which they intended to appeal. The abstract, however, does reflect that the notice was filed within thirty days of an order abstracted as follows:

November 10, 1993, court issues an order confirming sale, stating it examined the report of sale and "the report is, therefore, in all things approved." . . . "and the acting commissioner is ordered to make a deed to the purchaser" and present same for the court's approval. In this same order, the court approved the commissioner's deed "in all things" and authorized the deed to be admitted to record in the office of the recorder of Pulaski County, Arkansas. This

have no choice but to affirm their appeal under Rule 4-2 of the Arkansas Supreme Court Rules.

Automotive Rentals gave its separate notice of appeal on March 10, 1994, from an order entered March 1, 1994. That order provided that B.J. McAdams had a right to claim his homestead exemption in any excess proceeds from the sale of the encumbered property. Automotive Rentals subsequently filed a motion to consolidate its appeal with the McAdamses' appeal. We granted the motion. Subsequently, Automotive Rentals filed only a supplemental abstract. The supplemental abstract is, in form, compiled in compliance with Rule 4-2, but it does not sufficiently supplement the McAdamses' deficient abstract for us to reach its first point of appeal.

In its first point of appeal, Automotive Rentals argues that the chancellor's decision regarding the homestead exemption was contrary to public policy because of B.J. McAdams's fraudulent marriages and that the decision was clearly erroneous. Yet, there is nothing in either the McAdamses' abstract or Automotive Rentals's supplemental abstract to show that an argument about public policy and fraudulent marriages was made to the chancellor. The only pleading shown on the issue is contained in the McAdamses' abstract and is abstracted as follows:

January 28, 1994, ARI files Response and Brief to January 25, 1994, Motion of Shelby and Theresa McAdams for Homestead Rights.

THE MOTION STATES

- 1) They are not entitled to assert any homestead, they are residents of Florida.
- 2) The homestead assertion was made subsequent to the execution and order of sale (R.552).
- 3) A complete schedule, verified by affidavit was not filed (R.553).

[2] The foregoing does not reflect that a public policy argument was made to the trial court. Rather, it appears from the abstract that the argument is being raised for the first time on appeal, and we have often said that an argument cannot be raised

for the first time on appeal. *Silvey Cos. v. Riley*, 318 Ark. 788, 888 S.W.2d 636 (1994). As a result, we affirm this point of appeal.

[3] Automotive Rentals's second point of appeal is that B.J. McAdams has not complied with the March 1 order, the order from which it appeals. Obviously, this matter has not been ruled on by the trial court, and we therefore do not reach it.

The appeal of B.J. McAdams and Shelby and Theresa McAdams is affirmed. The one point of the appeal of Automotive Rentals that we reach is affirmed.

Affirmed in part and dismissed in part.
