

Donald L. McPEEK and Mary Louise Heroman McPeek
v. WHITE RIVER LODGE ENTERPRISES,
Mr. and Mrs. James B. Flowers, Mr. and Mrs. Timothy G.
Mancuso, and Mr. and Mrs. Lewis C. Moore

93-1267

905 S.W.2d 70

Supreme Court of Arkansas
Opinion delivered September 18, 1995

APPEAL & ERROR — MOTION TO STAY AND TO REMAND TO SETTLE RECORD GRANTED. — Where appellants' judgment was satisfied while the present appeal was pending, and appellees moved to dismiss the appeal, stating that appellants had accepted the benefits of their judgment, the supreme court granted appellants' motion to stay the briefing schedule and to remand the cause to the trial court to settle the record under Ark. R. App. 6(e); the court directed the parties to include with the other points on appeal the issues raised in appellees' motion to dismiss appeal.

Appellees' Motion to Dismiss to be briefed; Appellants' Motion for Stay and for Time to Supplement Record granted.

Kenneth H. Castleberry, for appellants.

David R. Matthews, for appellees.

PER CURIAM. Appellants timely appealed from the Carroll County Chancery Court's judgment, and on appeal, the appellants' brief was scheduled due on July 23, 1995. While this appeal was pending, appellants apparently caused a writ of execution to be issued below, seeking satisfaction of the trial court's judgment, and as a result, appellees assert the appellants' judgment has been satisfied in full. Appellees now move to dismiss appellants' appeal, stating the appellants have accepted the benefits of their judgment. Appellants respond, asserting among other things that their having accepted benefits of a judgment alleged to be inadequate is not a waiver of their right to appeal. Appellants also move to stay the briefing schedule in this appeal, so a corrected or supplemental record can be filed.

[1] First, we grant appellants' motion to stay and remand this cause to the trial court to settle the record under Ark. R. App. P. 6(e). Second, we direct the parties to include along with

the other points on appeal the issue raised in appellees' motion to dismiss appeal. Appellants shall have thirty days from the date of this per curiam to file a supplemental record and their brief shall be due thirty days thereafter.
