

ARKANSAS COUNTY *v.* DESHA COUNTY

01-1085

61 S.W.3d 840

Supreme Court of Arkansas
Opinion delivered December 13, 2001

1. APPEAL & ERROR — REQUEST THAT CLERK OF TRIAL COURT BE ORDERED TO TRANSMIT TRIAL EXHIBITS TO SUPREME COURT — GRANTED. — Where appellee’s petition stated that the trial exhibits were not included within the record, appellee’s request that the clerk of the trial court be required to transmit all standard-size trial exhibits to the supreme court was granted, and the clerk of the trial court was ordered to transmit the trial exhibits to the supreme court; Rule 3-1(a) of the Rules of the Arkansas Supreme Court provides that the record should include “exhibits.”
2. APPEAL & ERROR — OVERSIZED EXHIBITS MAY BE VITAL TO CONSIDERATION OF CASE — CLERK OF TRIAL COURT DIRECTED TO TRANSMIT EXHIBITS TO SUPREME COURT. — Where various over-sized trial exhibits, which might be vital to consideration of the case, were not included within the record, the supreme court directed the clerk of the trial court to transmit the exhibits to the supreme court; Rule 3-1(j) of the Rules of the Supreme Court states that “documents of unusual bulk or weight” may be filed with our court upon direction of the “party” or “the clerk of the court.”
3. APPEAL & ERROR — PROPER TIME TO ASSESS COSTS TO APPELLANT FOR FAILURE TO PROPERLY ABSTRACT CASE — SUPREME COURT DECLINED TO ASSESS COSTS ASSOCIATED WITH SUPPLEMENTING RECORD AT THIS TIME. — Pursuant to Rule 4-2 of the Rules of the Supreme Court, the proper time to assess costs to appellant for failure to properly abstract the case is after the supreme court takes the case under consideration; where the case had not yet been taken under consideration, the court declined to assess any costs associated with supplementing the record.
4. CERTIORARI — PETITION FOR WRIT OF *CERTIORARI* TO COMPLETE RECORD — GRANTED. — Appellee’s petition was granted and the supreme court directed that a writ of *certiorari* be issued to the clerk of the trial court to complete the record within thirty days and deliver it as soon as completed pursuant to Rule 3-5(b) of the Rules of the Supreme Court.

Petition for Writ of *Certiorari* to Complete the Record; petition granted.

No response.

Rose Law Firm, by: *Herbert C. Rule, III* and *Stephen N. Joiner*, for appellee/petitioner.

PER CURIAM. [1] Appellee, Desha County, has filed a petition for a writ of *certiorari* to complete the record pursuant to Rule 3-5 of the Rules of the Supreme Court. Appellee alleges that certain designated items are omitted from the transcript in this case. Specifically, appellee's petition states that the trial exhibits were not included within the record. Appellee requests that we require the clerk of the trial court to transmit all standard-size trial exhibits to our court. Rule 3-1(a) of the Rules of the Supreme Court provides that the record should include "exhibits." Accordingly, we grant appellee's request and order the clerk of the trial court to transmit the trial exhibits to this court.

[2] Appellee also argues that various over-sized trial exhibits should have been included within the record. Rule 3-1(j) of the Rules of the Supreme Court states that "documents of unusual bulk or weight" may be filed with our court upon direction of the "party" or "the clerk of the court." Appellee contends that "the trial court's transcript and the appellant's abstract of the testimony will be impossible to follow unless these exhibits are part of the record." Because these exhibits may be vital to our consideration of this case, we direct the clerk of the trial court to transmit these exhibits to this court.¹

[3] Finally, appellee contends that appellant should bear the costs associated with supplementing the record. Pursuant to Rule 4-2 of the Rules of the Supreme Court, the proper time to assess costs to appellant for failure to properly abstract the case is after we take the case under consideration. Accordingly, we decline to assess any costs associated with supplementing the record at this time.

[4] We grant the appellee's petition and direct that a writ of *certiorari* be issued to the clerk of the trial court to complete the

¹ We note that appellee does not think that it is necessary for the clerk of the trial court to transmit exhibit number forty-three to this court for our review during our consideration of this case. Because exhibit number forty-three is a cross-section of a persimmon tree, we agree with appellee and order the clerk of the trial court to retain possession of this over-sized exhibit.

record within thirty days and deliver it as soon as completed pursuant to Rule 3-5(b) of the Rules of the Supreme Court.²

Petition granted.

IMBER and HANNAH, JJ., not participating.
