

Billy Mack NICHOLS *v.* P. ARNOLD

01-961

66 S.W.3d 652

Supreme Court of Arkansas
Opinion delivered February 21, 2002

1. APPEAL & ERROR — CASES NO LONGER AFFIRMED BECAUSE OF INSUFFICIENCY OF ABSTRACT — APPELLANT FIRST GIVEN OPPORTUNITY TO CURE DEFICIENCIES. — Due to the supreme court's modification of Ark. Sup. Ct. R. 4-2, cases in which the record is lodged in the Arkansas Supreme Court or Arkansas Court of Appeals on or after September 1, 2001, will no longer be affirmed because of insufficiency of the abstract without the appellant first having the opportunity to cure the deficiencies.
2. APPEAL & ERROR — APPELLANT'S BRIEF LODGED WITHOUT ABSTRACT — REBRIEFING ORDERED. — Because appellant's brief contained no abstract, it was deficient, and the supreme court could not reach the merits of the case; therefore, appellant was given fifteen days to file a substituted abstract, addendum, and brief to conform to Rule 4-2(a)(5) and (7); mere modifications of the original brief will not be accepted; according to Rule 4-2(b)(3), if appellant fails to file a complying abstract, addendum and brief within the prescribed time, the judgment or decree may be affirmed for noncompliance with the Rule.

Appeal from Jefferson Circuit Court; *Fred D. Davis, III*, Judge; rebriefing ordered.

Appellant, pro se.

No response.

PER CURIAM. [1] Appellant, an inmate in the Arkansas Department of Correction, brings this appeal from the Jefferson County Circuit Court's dismissal without prejudice of his motion for declaratory judgment. Prior to this court's modification of Ark. Sup. Ct. R. 4-2, appellant's claims would not have been considered, because he has failed to abstract the material parts of the record that are necessary to an understanding of the questions presented for decision. However, under the modified rule, cases in which the record is lodged in the Arkansas Supreme Court or Arkansas Court of Appeals on or after September 1, 2001, will no longer be affirmed because of the insufficiency of the abstract without the appellant first having the opportunity to cure the deficiencies. See *In re: Modification of the Abstracting System — Amendments to Supreme Court Rules 2-3, 4-2, 4-3, 4-4*, 345 Ark. Appx. 626 (2001) (*per curiam*).

[2] Because appellant's brief contains no abstract, we find it to be deficient such that we cannot reach the merits of the case. Therefore, he has fifteen days from the date of this opinion to file a substituted abstract, Addendum, and brief to conform to Rule 4-2(a)(5) and (7). See *In re: Modification of the Abstracting System, supra*; Ark. Sup. Ct. R. 4-2(b)(3). Mere modifications of the original brief will not be accepted. *Id.* According to Rule 4-2(b)(3), if appellant fails to file a complying abstract, Addendum and brief within the prescribed time, the judgment or decree may be affirmed for non-compliance with the Rule.

Rebriefing ordered.