

DAIRYLAND INSURANCE COMPANY
v. Louise W. CARTER

77-14

551 S.W. 2d 211

June 6, 1977
(Division II)

APPEAL & ERROR — FAILURE TO ABSTRACT RECORD — EFFECT. —
Where appellant's abstract of the record is flagrantly deficient,
the judgment of the trial court will be affirmed under Rule 9 (e)
(2) of the Rules of the Supreme Court, Vol. 3A, Ark. Stat. Ann.
(Supp. 1975, p. 118).

Appeal from Miller Circuit Court, *John W. Goodson*,
Judge; affirmed under Rule 9.

*George L. McWilliams, Donald W. Capshaw and Hubbard,
Patton, Peek, Haltom & Roberts*, for appellant.

Williams & Kemp, by: *Karlton H. Kemp Jr.*, for appellee.

PER CURIAM

Appellant contends that the trial court erred in granting judgment in favor of appellee based on appellant's waiver of, or estoppel to assert, the right to avoid or forfeit an insurance policy because appellee failed to plead waiver or estoppel as an affirmative ground for relief; in concluding as a matter of law that a payment by appellee prior to a loss by her was sufficient to keep the policy in force; and in awarding \$1,000 as reasonable attorney's fees.

The judgment is affirmed under Rule 9 (e) (2) of the Rules of the Supreme Court of Arkansas [Vol. 3A, Ark. Stat. Ann. (Supp. 1975 p. 118)]. Appellant did not abstract any of the pleadings in the case or the judgment of the court. The case may well turn upon the content of a letter dated April 8, 1976. Appellant states, without record support, as the record is abstracted, that the circuit court's holding on waiver was based on this letter. We are referred to the record, not the abstract, for support of very broad, general statements made by appellant in its argument in at least three instances, but even in these instances there is no transcript reference. Consequently, we consider the abstract flagrantly deficient.

The judgment is affirmed.
