

MARIE BLACK v. ROBERT L. JENNINGS AND
MARY LOU JENNINGS

5-5099

448 S. W. 2d 18

Opinion delivered December 15, 1969

APPEAL & ERROR—ABSTRACTS OF RECORD—SCOPE & SUFFICIENCY.—Decree affirmed under Supreme Court Rule 9 where the abstract was insufficient, asserted facts not found in the record, contained no page references to the transcript, and the only way sufficient information could be obtained about the facts whereby the case could be considered on its merits would be for the seven judges to read the transcript, which is not practical.

Appeal from Union Chancery Court, Second Division, *Henry Yocum, Jr.*, Chancellor; affirmed.

Bill J. Davis, for appellant.

William I. Prewett, for appellees.

GEORGE ROSE SMITH, Justice. The decree in this case must be affirmed under Rule 9. The appellant's opening statement indicates that in the trial court the appellees' petition for a writ of habeas corpus to obtain the custody of two minor children was granted on the ground that an earlier award of custody in a Texas court was entitled to full faith and credit. The opening statement, however, asserts facts not to be found in the

record, contains no page references to the transcript, and certainly cannot be treated as even a partial abstract of the record within Rule 9.

The abstract itself barely exceeds a printed page in length. It gives no information whatever about the relationship of the parties to the two children, about the domicile of the litigants or of the children, or about the contents of the Texas order, which apparently is the most vital document to be considered in the case. The appellees have not filed a brief. We dislike deciding cases on grounds other than the merits, but here we have no choice. It is not practical for the seven judges to read the transcript, but that is the only way in which we could all obtain sufficient information about the facts to consider the case on its merits.

Affirmed.
