

B. J. HOLLEMAN ET AL *v.* GERALDINE FOWLER

5-5267

454 S. W. 2d 100

Opinion delivered May 25, 1970

1. APPEAL & ERROR—APPELLANT'S FAILURE TO SUBMIT ABSTRACT OR BRIEF—REVIEW.—Decree of the lower court will be affirmed under Supreme Court Rule 10 when an appellant fails to submit an abstract or brief, notwithstanding submission of a record.
2. APPEAL & ERROR—APPELLEE'S FAILURE TO SUBMIT ABSTRACT ON CROSS APPEAL—REVIEW.—When appellee cross appeals and submits a brief but fails to abstract that part of the record pertinent to the cross appeal, lower court's decree will be affirmed, it being impossible for all seven judges to examine the record.

Appeal from White Chancery Court, *John Jernigan*, Chancellor; affirmed.

Comer Boyett, Jr., for appellants.

Lightle & Tedder, for appellee.

GEORGE ROSE SMITH, Justice. This appears to be a suit by the appellee to recover judgment upon a \$30,000 note and to impress a constructive trust upon certain land. The chancellor granted the money judgment but refused to enforce the asserted trust. The appellants gave notice of appeal and filed a two-volume record in this court, but they have not submitted an abstract or a brief. As to them the decree must be affirmed under our Rule 10.

The appellee filed notice of cross appeal and has submitted a brief urging that the chancellor erred in refusing to declare a constructive trust. The appellee, however, has not abstracted that part of the record pertinent to her cross appeal, as she should have done. *Terry v. Klein*, 133 Ark. 363, 201 S. W. 801 (1918). It being impossible for all the seven judges to examine the record, we have no choice except to affirm the decree on cross appeal as well. *Insured Lloyds v. Ahrend*, 245 Ark. 225, 431 S. W. 2d 740 (1968).

Affirmed.
