

The ESTATE of SHAWN McKNIGHT v.
BANK of AMERICA, N.A.

07-368

266 S.W.3d 742

Supreme Court of Arkansas
Opinion delivered November 1, 2007

APPEAL & ERROR — MOTION TO ENFORCE WRIT OF CERTIORARI WAS GRANTED — WRIT WAS REISSUED. — Where the supreme court granted the petition for writ of certiorari to complete the record in two related cases, and the circuit clerk returned the writ with respect to one, but the writ regarding the other case was not returned and no supplemental record was filed, the court directed the Supreme Court Clerk to reissue the writ of certiorari to complete the record in that case.

Motion to Supplement Record or in the Alternative to Enforce Writ of Certiorari; motion granted.

Gary Eubanks & Associates, by: *Jeffrey A. Weber* and *Russell D. Marlin*, for appellant.

Wright, Lindsey & Jennings, LLP, by: *Isaac A. Scott, John G. Lile, III, and Judy Simmons Henry*, for appellee.

PER CURIAM. On September 27, 2007, Appellant, the estate of Shawn McKnight, filed a motion for leave to supplement the record on appeal or, in the alternative, to enforce a writ of certiorari entered by this court on May 3, 2007. We order the Clerk to reissue a writ of certiorari to complete the record in the present case.

On April 10, 2007, the appellants in *Estates of Jerome McKnight v. Bank of America*, 07-371, and *The Estate of Shawn McKnight, v. Bank of America, N.A.*, 07-368, lodged partial records from the Phillips County Circuit Court. On that same day, Appellants in both cases filed a petition for a writ of certiorari requesting that we order the circuit court clerk to complete the respective records because both records were missing certain exhibits from an underlying probate hearing. On May 3, 2007, we granted the petition for writ of certiorari to complete the record in both cases. On June 4, 2007, the circuit court clerk returned the writ with respect to 07-371, and a supplemental record consisting of trial exhibits was filed in that case. However, the writ regarding 07-368 was not returned and no supplemental record was filed.

On June 8, 2007, the appellant in 07-368 moved to consolidate the two cases. We denied the motion to consolidate on June 28, 2007. Appellant then filed a motion to use the exhibits from 07-371 in 07-368, asserting that the exhibits were from the same underlying probate hearing and were identical. On September 6, 2007, we denied Appellant's motion. Appellant now brings the present motion.

[1] Appellant argues that the issue here can be remedied by supplementing the record in 07-368 with exhibits from the record in 07-371. In the alternative, Appellant requests that we enforce the writ issued to the Phillips County Circuit Court on May 3, 2007, with respect to 07-368. Appellee Bank of America responds, arguing that Appellant did not make any objections to the accounting or assert any claims and that the exhibits admitted in 07-371 should not be made part of the record in 07-368. Based on the facts above, we direct the Supreme Court Clerk to reissue the writ of certiorari to complete the record in 07-368.

Motion granted.