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GRIFFIN-PAYNE, INC. v. UNION BANK OF BENTON 85-304 710 S.W.2d 201

Supreme Court of Arkansas Opinion delivered June 9, 1986

1. APPEAL & ERROR — ISSUES RAISED FOR FIRST TIME ON APPEAL — SUPREME COURT WILL NOT CONSIDER. — The Supreme Court will not consider issues raised for the first time on appeal.

2. APPEAL & ERROR — PLAIN ERROR RULE. — Arkansas does not

have the plain error rule.

3. Pleading & practice — Ark. Stat. Ann. § 27-1142 (Supp. 1985), allowing trial court to strike answer of defendant for failure to file affidavit of merit superseded by Rule 8,

Cite as 289 Ark. 182 (1986)

ARK. R. CIV. P. — Ark. Stat. Ann. § 27-1142 (Supp. 1985), which allowed a trial court to strike the answer of a defendant if he failed to include an affidavit of merit in response to a plaintiff's affidavit of no defense, does not conform with Ark. R. Civ. P. Rule 8, and is therefore deemed to be superseded.

Appeal from Pulaski Circuit Court; David Bogard, Judge; affirmed.

Mitchell, Williams, Selig, Jackson & Tucker, by: James E. Smith, Jr. and Susan Gunter, for appellant.

House, Wallace, Nelson & Jewell, P.A., by: James M. Wegener, for appellee.

JACK HOLT, JR., Chief Justice. Union Bank of Benton, appellee, was granted a summary judgment in its lawsuit over a promissory note against Griffin-Payne, Inc., appellant. Appellant does not argue the merits of the action on the note, but rather contends that the trial court erred in striking its answer pursuant to Ark. Stat. Ann. § 27-1142 (Supp. 1985), and that a local court rule pertaining to motions for summary judgments was not followed by the appellee. We affirm the trial court because none of the issues argued on appeal were raised below. Our jurisdiction is pursuant to Sup. Ct. R. 29(1)(c).

- [1, 2] Appellant was given ten days to respond to appellee's motion to strike appellant's answer and for summary judgment. No response was made and appellant's counsel did not attend the hearing on the motion. We have repeatedly held that we will not consider issues raised for the first time on appeal, and that we do not have the plain error rule. Sun Gas Liquids Co. v. The Helena National Bank, 276 Ark. 173, 633 S.W.2d 38 (1982); Wilson v. Wilson, 270 Ark. 485, 606 S.W.2d 56 (1980).
- [3] To avoid confusion, it should be noted that § 27-1142, which allowed a trial court to strike the answer of a defendant if it failed to include an affidavit of merit in response to a plaintiff's affidavit of no defense, is no longer the rule in Arkansas. We recently held that this statute does not conform with Ark. R. Civ. P. Rule 8, and is therefore deemed to be superseded. Borg-Warner Acceptance Corp. v. Kesterson, 288 Ark. 611, 708 S.W.2d 606 (1986). No challenge to the summary judgment was made by appellant on this basis at trial or on appeal.

Affirmed.