Cite as 2011 Ark. 266

SUPREME COURT OF ARKANSAS

No. 10-870

M. JAY CARTER,
APPELLANT,

VS.

ERNIE CLINE AND KAREN CLINE,
APPELLEES,

Opinion Delivered June 16, 2011

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, THIRD DIVISION, NOS. CV2006-10779; CV2008-2993, HON. JAMES MOODY, JR.,

REBRIEFING ORDERED.

PER CURIAM

Appellant, M. Jay Carter, appeals the order of the Pulaski County Circuit Court awarding Appellees Ernie and Karen Cline money damages pursuant to a jury verdict, in addition to attorneys' fees and costs, on their complaint for breach of a contract to purchase real estate. For reversal, Appellant contends that there has not been compliance with Rule 54(b) of the Arkansas Rules of Civil Procedure, that the circuit court erred in denying Appellant's motion for judgment notwithstanding the verdict concerning the breach and measure of damages, and that the award of costs and attorneys' fees was warranted based on the jury's verdict. We are precluded from reaching the merits of Appellant's arguments, however, due to a deficient abstract. We therefore remand for rebriefing.

Arkansas Supreme Court Rule 4-2(a)(5) (2011) provides in pertinent part:

> (5) *Abstract*. The appellant shall create an abstract of the material parts of all the transcripts (stenographically reported material) in the record. Information in a transcript is material if the information is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal.

. . . .

> (B) *Form*. The abstract shall be an impartial condensation, without comment or emphasis, of the transcript (stenographically reported material). The abstract must not reproduce the transcript verbatim. No more than one page of a transcript shall be abstracted without giving a record page reference. In abstracting testimony, the first person ("I") rather than the third person ("He or She") shall be used. The question-and-answer format shall not be used. In the extraordinary situations where a short exchange cannot be converted to a first-person narrative without losing important meaning, however, the abstract may include brief quotations from the transcript.

Rather than abstracting in the first person the transcript of the jury trial held in this case, Appellant reproduced portions of the transcript in all capital letters in the question-and-answer format. We agree with the court of appeals that it is wrong to use the question-and-answer format because

> [t]he abstract must give the essence of each witness's testimony in an impartial first-person narrative, the witness's story shorn of the immaterial details, redundancies, and hiccups that characterize testimony under questioning. The transcript's question-answer format must fall away—except in those instances where the exchange simply cannot be condensed without losing something important. Page after page of questions and answers does not hit this mark.

Lackey v. Mays, 100 Ark. App. 386, 388–89, 269 S.W.3d 397, 398 (2007). Our rule clearly mandates that "[t]he question-and-answer format shall not be used." Ark. Sup. Ct. R. 4-2(a)(5)(B). Appellant's abstract in the present case is 118 pages of questions and answers and therefore does not comply with Rule 4-2(a)(5)(B).

Due to Appellant's failure to comply with our rule concerning abstracting, we order Appellant to file a substituted brief, curing the deficiencies in the abstract within fifteen days

from the date of entry of this order pursuant to Rule 4-2(b)(3). After service of the substituted brief, Appellees shall have the opportunity to file a responsive brief in the time prescribed by the supreme court clerk, or they may choose to rely on the brief previously filed in this appeal. While we have noted the above-mentioned deficiency, we encourage Appellant's counsel to review Rule 4-2 in its entirety as it relates to the abstract and addendum, as well as the entire record, to ensure that no additional deficiencies are present, as any subsequent rebriefing order may result in affirmance of the order or judgment due to noncompliance with Rule 4-2. *See* Ark. Sup. Ct. R. 4-2(b)(3) (2011); *see also Kirkland v. Sandlin*, 2011 Ark. 106 (per curiam).

Rebriefing ordered.