

SUPREME COURT OF ARKANSAS

No. 10-870

M. JAY CARTER

APPELLANT

V.

ERNIE CLINE AND KAREN CLINE

APPELLEES

Opinion Delivered October 10, 2011

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

SUPPLEMENTAL ABSTRACT AND ADDENDUM 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 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 the measure of damages, and that the award of costs and attorneys' fees was not warranted based on the jury's verdict. We order appellant to file a supplemental abstract within seven calendar days to cure deficiencies in his brief.

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.

A hearing was conducted on October 8, 2009, concerning appellant's motion for judgment notwithstanding the verdict, appellees' motion for attorneys' fees and costs, and appellant's motion for attorneys' fees and costs. The circuit court entered an order on October 19, 2009, granting appellees' motion for attorneys' fees and costs in the amount of \$85,266 and denying appellant's motion for judgment notwithstanding the verdict. Appellant specifically appealed from the October 19, 2009 order and raises issues on appeal relating to the award of attorneys' fees and the denial of his motion for judgment notwithstanding the verdict. Appellant has failed to include an abstract of the October 8, 2009 hearing. As this hearing is essential for this court to understand the case and to decide the issues on appeal, we order appellant to file a supplemental abstract that includes the October 8, 2009 hearing within seven calendar days. *See* Ark. Sup. Ct. R. 4-2(b)(4) (2011).

Additionally, appellant has failed to include his motion to amend the circuit court's October 19, 2009 order awarding attorneys' fees, as well as his brief in support of that motion, in the addendum. Arkansas Supreme Court Rule 4-2(8)(A)(i) (2011) requires that "all motions (including posttrial and postjudgment motions), responses, replies, exhibits, and related briefs, concerning the order, judgment, or ruling challenged on appeal" be included in the addendum. Because appellant challenges the circuit court's award of attorneys' fees on appeal, we order appellant to file a supplemental addendum that includes the motion to amend and brief in support within seven calendar days.



Cite as 2011 Ark. 426

We find it necessary to point out that this case previously has been sent back for rebriefing due to deficiencies in the abstract. *See Carter v. Cline*, 2011 Ark. 266 (per curiam). Because we have recently changed our rules to allow a party to file a supplemental addendum or abstract within seven calendar days where complete rebriefing is not needed, we will permit appellate counsel one more opportunity to cure deficiencies in the briefs. *See Ark. Sup. Ct. R. 4-2(b)(4)* (2011). While we have noted the above deficiencies, we encourage appellate counsel, prior to filing the supplemental abstract and addendum, to review our rules as well as the record, addendum, and abstract to ensure that no additional deficiencies are present. We further note that, if after the opportunity to cure any deficiency, appellant fails to file a complying abstract or addendum within the prescribed time, the judgment or decree may be affirmed for noncompliance with the rule. *See Ark. Sup. Ct. R. 4-2(b)(3)* (2011); *see also Kirkland v. Sandlin*, 2011 Ark. 106 (per curiam).

Supplemental abstract and addendum ordered.