

Mrs. Russell L. MERRITT et al v.  
J. W. Merritt et al

77-357

565 S.W. 2d 603

Opinion delivered May 8, 1978  
(Division II)

[Rehearing denied June 12, 1978.]

1. APPEAL & ERROR — FAILURE OF APPELLANT TO ABSTRACT RECORD — AFFIRMANCE ON APPEAL. — Where appellant failed to abstract the record on appeal in compliance with Rule 9, Rules of the Arkansas Supreme Court, *held*, the appeal is affirmed.
2. APPEAL & ERROR — ABSTRACT OF RECORD — ABSTRACT IN REPLY BRIEF IMPROPER. — An abstract of the record in the appellants' reply brief is improper.

Appeal from Lonoke Chancery Court, Third Division,  
*Bruce T. Bullion*, Chancellor; affirmed.

*Eugene J. Mazzanti*, for appellants.

*Charles A. Walls, Jr.*, for appellees.

DARRELL HICKMAN, Justice. This appeal is affirmed because we find the abstract of the record to be flagrantly deficient in violation of Rule 9(e)(2). The appellants did not abstract any of the trial records or testimony in their brief. The appellees abstracted some of the testimony. However, it can be safely said the evidence abstracted by the appellees is favorable to their position. The appellants apologized in their reply brief for not complying with Rule 9 and offered an abstract of the records and testimony. However, an abstract in the appellants' reply brief is improper. We recently affirmed a case for a similar violation of Rule 9. *Weston v. Ponder*, 263 Ark. 370, 565 S.W. 2d 31 (1978).

Affirmed.

We agree. HARRIS, C.J., and BYRD and HOWARD, JJ.