

## Robert J. SMITH v. Norma Jean SMITH

77-410

567 S.W. 2d 88

Opinion delivered June 5, 1978

(Division I)

[Rehearing denied July 17, 1978.]

1. APPEAL & ERROR — FAILURE TO PROPERLY ABSTRACT RECORD — EFFECT. — On an appeal and cross-appeal concerning the awards and evaluations of property in a divorce action, where the parties' abstracts of record are flagrantly in violation of Rule 9, Rules of the Supreme Court, *held*, the decree of the chancellor is affirmed.
2. APPEAL & ERROR — QUESTIONS OF FACT — IMPORTANCE OF ABSTRACT OF FACT FINDER'S OPINION & SUPPORTING TESTIMONY. — When questions of fact are involved in an appeal to the Supreme Court, the explanatory opinion of the fact finder is especially important to the Court, and an abstract of the fact finder's opinion and of the testimony on which he relied is necessary for a proper consideration of the case on its merits.

Appeal from Washington Chancery Court, *Thomas F. Butt*, Chancellor; affirmed.

*P. A. Hollingsworth*, for appellant.

*Kincaid, Horns, & Trumbo*, for appellee.

GEORGE ROSE SMITH, Justice. In this divorce case the court awarded the wife a divorce and custody of the couple's four minor children. The appeal and cross appeal question

only the chancellor's awards and evaluations of four separate items of property. The husband, a physician, is engaged in the practice of medicine in partnership with another doctor. The arguments for reversal question primarily the chancellor's evaluation (a) of the wife's one-third life interest in the partnership office building and (b) of her one-third interest in a partnership profit-sharing plan and in the partnership assets and good will.

We do not reach the merits, because the parties' abstracts of the record are flagrantly in violation of Rule 9. The issues presented are primarily questions of fact. The reporter's transcript of the testimony comprises more than 250 pages in the record. The appellant presents a 5-page abstract of that testimony, the abstract mentioning only certain facts favorable to him. The appellee's even shorter supplemental abstract is equally deficient. The chancellor, after taking the case under advisement, painstakingly explained his awards and valuations in a 6-page, double-spaced opinion, with several citations of supporting authority. The parties have ignored the chancellor's findings of fact and his reasons for his conclusions. When questions of fact are involved, the explanatory opinion of the fact finder is especially important to this court. *Manes v. M.O.V.E., Inc.*, 261 Ark. 793, 552 S.W. 2d 211 (1977). In the case at bar we have not been supplied with an abstract either of the chancellor's opinion or of the greater part of the testimony upon which he relied. Consequently the case presented to this court is not the same case that was decided in the court below.

Affirmed.

We agree. HARRIS, C.J., and FOGLEMAN and HOLT, JJ.