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# SUPREME COURT OF ARKANSAS

No. CV–12–836

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| HOTFOOT LOGISTICS, LLC, AND FREIGHT AMBULANCE, LLC<br>APPELLANTS | **Opinion Delivered** June 20, 2013 |
| V. | |
| SHIPPING POINT MARKETING, INC.; DAVID FISHGOLD; AND LOUIS FISHGOLD<br>APPELLEES | <u>CONCURRING OPINION ON THE DENIAL OF PETITION FOR REHEARING</u>. |

**DONALD L. CORBIN, Associate Justice**

I concur to the denial of the petition for rehearing but write separately so as to clarify any misconceptions that may arise from the dissenting opinion on the denial of rehearing. Pursuant to Arkansas Supreme Court Rule 2-3(g) (2012), we grant a petition for rehearing if appellant "call[s] attention to specific errors of law or fact." This court's majority opinion contains no factual error and no legal error, as we have previously converted Rule 12 motions to summary-judgment motions when the circuit court looks outside the complaint in making its ruling. *See Ganey v. Kawasaki Motors Corp., U.S.A.*, 366 Ark. 238, 234 S.W.3d 838 (2006) (converting a 12(b)(2) motion to a motion for summary judgment, as matters outside the pleadings were considered by the circuit court); *Rankin v. Farmers Tractor & Equip. Co., Inc.*, 319 Ark. 26, 888 S.W.2d 657 (1994) (reviewing whether the circuit court improperly converted appellant's motion to dismiss into a summary-judgment motion and holding that appellant failed to show that he suffered any prejudice by the circuit court's ruling). This case

law comports with the well-established proposition that once this court has interpreted its rules, that interpretation subsequently becomes a part of the rule itself. *Arkco Corp. v. Askew*, 360 Ark. 222, 200 S.W.3d 444 (2004). For these reasons, we deny SPM's petition for rehearing because this opinion contains neither an error of fact nor an error of law.

The dissent suggests that the majority erroneously converts SPM's motion to dismiss, filed pursuant to Arkansas Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction, into a motion for summary judgment. Here, the circuit court based its decision "on the pleadings and all other things and matters properly before the [c]ourt." Specifically, the circuit court examined Hotfoot's amended complaint, including the attached exhibits, which included the rate-confirmation contract, an affidavit of Hotfoot's vice-president noting the $5,700 balance due, and several bills of lading; SPM's motion to dismiss; SPM's brief in support; Hotfoot's response to SPM's motion to dismiss; and Hotfoot's brief in support. The circuit court also considered separate motions to dismiss filed by David Fishgold and Louis Fishgold and their separate briefs in support. Rule 7 of the Arkansas Rules of Civil Procedure (2012) clearly distinguishes pleadings and motions. Rule 7(a) lists the "[p]leadings [a]llowed" as a complaint, an answer, a counterclaim, a reply to counterclaim, an answer to a cross-claim, a third-party complaint, and a third-party answer. Pursuant to Rule 7(b)(1), however, a motion is "[a]n application to the court for an order." Consistent with the plain language of Rule 7, this court has held that a motion is not a pleading. *Bennett v. Spaight*, 372 Ark. 446, 277 S.W.3d 182 (2008); *Estate of Hastings v. Planters & Stockmen Bank*, 307 Ark. 34, 818 S.W.2d 239 (1991). *See also* 2 David Newbern, John J. Watkins & D.P. Marshall, Jr.,

*Arkansas Civil Practice & Procedure* § 11:1 (5th ed. 2010). And, clearly, briefs in support of motions are not pleadings. Thus, the dissent's claim that the circuit court only reviewed "pleadings and attached exhibits" is incorrect. Thus, because matters outside the pleadings were presented and not excluded by the circuit court in connection with the Rule 12(b) motion, we properly reviewed the instant motion as one for summary judgment. *Clark v. Ridgeway*, 323 Ark. 378, 914 S.W.2d 745 (1996), and the dissent's assertion to the contrary is without merit.

HANNAH, C.J., and DANIELSON and GOODSON, JJ., join.


*Cross, Gunter, Witherspoon & Galchus, P.C.*, by: *J. E. Jess Sweere*, for appellees.

No response.