

Cite as 2010 Ark. 210

SUPREME COURT OF ARKANSAS

No. 09-454

JULIA CAROLE GUNN,
APPELLANT,

VS.

FARMERS INSURANCE EXCHANGE,
TRUCK INSURANCE EXCHANGE,
MID-CENTURY INSURANCE
COMPANY,
FARMERS NEW WORLD LIFE
INSURANCE COMPANY,
FARMERS INSURANCE CO., INC.,
AND FARMERS GROUP, INC.
APPELLEE,

Opinion Delivered 5-6-10

APPEAL FROM THE SEBASTIAN
COUNTY COURT

NO. CV-2007-1539

HON. JAMES O. COX, JUDGE,

ORDER TO SUPPLEMENT THE
RECORD ISSUED.

PER CURIAM

The appellant, Julia Gunn, was a longtime insurance agent for Farmers Insurance¹ (“Farmers”) in Sebastian County, Arkansas. In late 2004, she was informed by Farmers that her Farmers Agent Appointment Agreement would be terminated effective December 27, 2004. On November 27, 2007, Gunn filed a complaint against Farmers in Sebastian County Circuit Court. On December 21, 2007, Farmers filed a notice in the circuit court that it was

¹The named defendants are Farmers Insurance Exchange; Truck Insurance Exchange; Fire Insurance Exchange; Mid-Century Insurance Company; Farmers New World Life Insurance Company; Farmers Insurance Co, Inc.; and Farmers Group, Inc. All of the named defendants except Farmers Group, Inc. were named parties to Gunn’s agency contract. Farmers Group, Inc. was included in the lawsuit because Gunn alleges that it “directed the business affairs of the other companies . . . and some of the actors in this case were employees of FGI.”

seeking removal and a notice of removal in the United States District Court for the Western District of Arkansas.

According to a print-out of the federal district court's docket sheet, which is included in the record before this court, Gunn refiled her complaint in federal court on December 21, 2007, and subsequently filed an amended complaint on January 18, 2008. The docket sheet also indicates that Farmers filed an answer in federal court on January 29, 2008. On February 4, 2008, the federal judge entered an order remanding the case to state court after determining that it lacked subject-matter jurisdiction to hear the matter. That order was filed in state court on February 6, 2008.

On November 12, 2008, Farmers moved for summary judgment and filed a brief in support in circuit court. The motion concluded as follows: "WHEREFORE, Defendants pray that their Motion for Summary Judgment is granted, that Plaintiff's First Amended Complaint is dismissed with prejudice, and for all other just and proper relief to which they may be entitled." Gunn responded on December 4, 2008; Farmers filed a reply brief in support of the motion on December 18, 2008; and Gunn filed a supplemental brief in support of the response to the motion for summary judgment on December 20, 2008. The circuit judge heard the matter on January 15, 2009, and issued a letter opinion stating his intention to grant Farmers' motion on January 16, 2009. Gunn filed a notice of appeal on February 13, 2009. On March 2, 2009, the circuit judge entered a judgment granting Farmers' motion for summary judgment. The judgment concluded that the motion for summary judgment was

granted and said: “Plaintiff’s First Amended Complaint is hereby dismissed with prejudice.”

Gunn then filed an amended notice of appeal on March 24, 2009.

Rules 3 and 5 of the Arkansas Rules of Appellate Procedure—Civil require an appellant to file the record in an appeal within 90 days from the filing of the first notice of appeal. Ark. R. App. P.—Civ 3 & 5 (2009). Rule 6 mandates that the contents of the record comply with this court’s rules, which define the record in civil cases as “the pleadings, judgment, decree, order appealed, transcript, exhibits, and certificates.” *Id.* R. 6(a); Ark. R. Sup Ct. 3-1(n) (2009). Rule 6 also provides that

[i]f anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the circuit court before the record is transmitted to the appellate court, *or the appellate court on motion, or on its own initiative*, may direct that the omission or misstatement shall be corrected, and if necessary, that a supplemental record be certified and transmitted.

Ark. R. App. P.—Civ 6(e) (2009) (emphasis added).

In the instant case, the motion for summary judgment sought dismissal of Gunn’s “First Amended Complaint.” The judgment appealed from, which granted that motion, dismissed with prejudice Gunn’s “First Amended Complaint.” The amended complaint, however, is not in the record.² It is clear from the record before us that the pleading reviewed by the parties and the circuit judge in considering the motion for summary judgment has not been provided to this court. For example, Gunn’s original complaint alleged the following causes

²Farmer’s answer to the First Amended Complaint is also missing from the record submitted to this court.

of action:

- Count I – Breach of Contract/Interference with Contractual Relationship or Business Expectancy/Negligence;
- Count II – Misrepresentation, Deceit, Outrage;
- Count IV³ – Breach of the Arkansas Franchise Act § 4-72-207 through § 4-72-140.

The order granting summary judgment however, lays out Gunn’s complaint as follows:

- Count I – Breach of K;
- Count II – Interference with Contractual Relationship or Business Expectancy;
- Count III – Negligence;
- Count IV – Fraud and Deceit;
- Count V – Franchise Practices Act.

In addition, throughout the transcript of Gunn’s deposition, Farmers’ attorneys refer to the first amended complaint by paragraph, and the paragraphs referred to do not coincide with the initial complaint included in the record.

In sum, Gunn filed an amended complaint in federal court that appears to be the basis for Farmers’ summary judgment motion and the circuit judge’s order. Without a copy of the amended complaint, however, this court is forced to speculate as to its contents. Given that this operative pleading is not included in the record before us, we order Gunn to file a supplemental record to include the First Amended Complaint within fifteen days of the

³Gunn’s complaint did not include “Count III.”

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issuance of this opinion. Pursuant to Ark. Sup. Ct. R. 4-2(b)(3), we also order Gunn to file a substituted brief and to include the amended complaint in the addendum.