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SUPREME COURT OF ARKANSAS

No. CV-09-1011

GRAND VALLEY RIDGE, LLC; TOM
A. TERMINELLA A/K/A THOMAS
A. TERMINELLA

APPELLANTS

V.

METROPOLITAN NATIONAL
BANK

APPELLEE

Opinion Delivered May 6, 2010

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT

[NO. CV-2007-1347-2]

HON. KIM M. SMITH, JUDGE

REBRIEFING ORDERED.

PER CURIAM

Appellants, Grand Valley Ridge, LLC, and Tom A. Terminella a/k/a Thomas A. Terminella, have filed a notice of appeal stating that they are appealing from the order of the Washington County Circuit Court denying their motion for new trial and for vacation of the judgment and decree of foreclosure. Appellants do not, however, include the order denying their motion for new trial and vacation of judgment and decree in their addendum filed with this court. The notice of appeal further states that the appeal is also taken from at least seven previous orders or judgments entered in this case. However, Appellants also failed to include two of these seven enumerated orders or judgments in their addendum. Because these missing orders and judgments are those “from which the appeal is taken,” they are “essential to an understanding of the case and the Court’s jurisdiction.” *See Ark.*

Sup. Ct. R. 4-2(a)(8) (2009)¹. Appellants' omission of these items from the addendum therefore renders Appellants' brief deficient, and we order rebriefing in this case pursuant to Rule 4-2(b)(3).

We have found other deficiencies in Appellants' brief, abstract, and addendum that also require us to order rebriefing. First, regarding the order being appealed (the order denying their motion for new trial and vacation of judgment and decree), we note that the motion itself as well as any response, reply, or briefs in support are missing from the addendum. This court has stated that "an order of a circuit court cannot be reviewed for error when the addendum fails to include the documents on which the order was based." *Dachs v. Hendrix*, 2009 Ark. 322, at 3, 320 S.W.3d 645, 647 (per curiam) (quoting *Bryan v. City of Cotter*, 2009 Ark. 172, at 4, 303 S.W.3d 64, 66–67 (per curiam)).

Second, we note that one of Appellants' points on appeal challenges a grant of partial summary judgment to Appellee, Metropolitan National Bank. The order granting the partial summary judgment is included in the addendum and states that the circuit court considered "the briefs filed by the parties and the arguments of counsel." These briefs, as well as the motion for summary judgment and any response or reply, are not included in the addendum. "This court has consistently ordered rebriefing in appeals of summary

¹Appellants filed their brief in this court on December 4, 2009. We have therefore applied the version of Rule 4-2 that existed on that date. We note, however, that this court has adopted changes to Rule 4-2 that became effective on January 1, 2010. *In re Arkansas Supreme Court and Court of Appeals Rules 4-1, 4-2, 4-3, 4-4, 4-7 and 6-9*, 2009 Ark. 534 (Oct. 29, 2009) (per curiam). While those changes had no substantive effect on the manner in which we deal with deficient briefs, we simply take this opportunity to point out that we have adopted changes in the rule that may be helpful to the appellate bar.

judgments where the addendum fails to include the motion for summary judgment, the opposing party's response to the motion, the moving party's reply to the response, and any briefs in support." *Bryan*, 2009 Ark. 172, at 3, 303 S.W.3d at 65. As for the "arguments of counsel" that the circuit court considered, we are unable to ascertain at this juncture if the 468-page abstract includes such argument, as Appellants have not referenced the contents of the abstract in their table of contents as required by Rule 4-2(a)(1). The missing motion for summary judgment, responses, replies, and briefs in support, as well as any argument advanced by counsel at a hearing, are "essential to an understanding of the case" as required by Rule 4-2(a)(8). See *Snowden v. JRE Invs., Inc.*, 2010 Ark. 80 (per curiam).

It is Appellants' burden to provide us with a record, abstract, addendum, and brief that allow us to understand the issues presented on appeal. *Dachs*, 2009 Ark. 322, 320 S.W.3d 645. Appellant's failure to include the aforementioned items is a failure to comply with Rule 4-2(a)(8) and precludes our ability to confirm our jurisdiction and our ability to review on appeal the issues presented. Pursuant to Rule 4-2(b)(3), we order Appellants to file a substituted brief, abstract, and addendum in the case within fifteen days from the entry of this order. After service of the substituted brief, abstract, and addendum, Appellee shall have an opportunity to revise or supplement its brief in the time prescribed by the clerk. We consider our foregoing identification of essential and missing items to in no way be an exclusive or exhaustive list, and therefore strongly encourage appellate counsel, prior to filing the substituted brief, abstract, and addendum to review our rules as well as the substituted addendum and brief to ensure that no additional deficiencies are present. *Roberts v. Roberts*, 2009 Ark. 306, 319 S.W.3d 234 (per curiam). If Appellants fail to cure the

deficiencies within the time prescribed, the orders appealed from may be affirmed for noncompliance with Rule 4-2. Ark. Sup. Ct. R. 4-2(b)(3); *Meyer v. CDI Contractors, LLC*, 2009 Ark. 304, 318 S.W.3d 87 (per curiam).

Rebriefing ordered.

BROWN, J., not participating.