

Cite as 2010 Ark. 248

**SUPREME COURT OF ARKANSAS**

No. 09-1070

BAPTIST HEALTH,  
APPELLANT/CROSS-APPELLEE,

VS.

BRUCE E. MURPHY, M.D. ET AL.,  
APPELLEES/CROSS-APPELLANTS,

AMERICAN MEDICAL ASSOCIATION,  
and ARKANSAS MEDICAL SOCIETY,  
INTERVENOR APPELLEES,

**Opinion Delivered** May 20, 2010

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
NO. CV-2004-2002, HON. COLLINS  
KILGORE, JUDGE.

REBRIEFING ORDERED.

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**PER CURIAM**

Appellant/Cross-Appellee Baptist Health appeals from an order of the Pulaski County Circuit Court entered on April 13, 2009. The court held that by adopting its Economic Conflict of Interest Policy in May 2003, Baptist Health tortiously interfered with the relationship between Appellees/Cross-Appellants, Dr. Bruce Murphy, et al., and their patients, and violated the Arkansas Deceptive Trade Practices Act. Consequently, the court found that Appellees were entitled to a declaratory judgment and permanent injunctive relief enjoining Baptist Health from implementing the Economic Conflict of Interest Policy against them.

Baptist Health alleges several errors on appeal, one of which is that the circuit court erred in denying Baptist Health's demand for a jury trial on the ground that Appellees sought

only a permanent injunction and not actual damages. Baptist Health filed its demand for a jury trial on March 30, 2007. On February 21, 2008, Appellees filed a motion to strike Baptist Health's demand for a jury trial. They included with the motion a memorandum in support. On February 29, 2008, Baptist Health filed a response to this motion, with a memorandum detailing its arguments as to why it had a right to a jury trial. On March 3, 2008, the circuit court entered an order granting the motion to strike. In the order, the circuit court gave a very brief synopsis of the parties' arguments.

While Baptist Health has included in the Addendum the circuit court's March 3, 2008 order and its March 30, 2007 demand for a jury trial, Baptist Health has failed to include Appellees' motion to strike and the accompanying memorandum in support, as well as its own brief and memorandum in response to the motion to strike. Because these documents contain arguments that the parties now make on appeal, but which the circuit court did not address in its order, they are "essential to an understanding of the case and the Court's jurisdiction on appeal." Ark. Sup. Ct. R. 4-2(a)(8) (2009). Accordingly, Baptist Health's brief is not in compliance with Ark. Sup. Ct. R. 4-2(a)(8) (2009).<sup>1</sup> The appellant has the burden of providing us with a record, abstract, addendum and brief that allows us to understand the issues presented on appeal; failure to do so precludes our ability to review on appeal the issues presented. *Dachs v. Hendrix*, 2009 Ark. 322, 320 S.W.3d 645.

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<sup>1</sup>Baptist Health filed its brief in this court on December 19, 2009. Therefore, we apply the version of Rule 4-2 that existed on that date. This court's adoption of changes to Rule 4-2 did not become effective until 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).

The procedure to be followed when a party has provided an insufficient Addendum is set out in Ark. Sup. Ct. R. 4-2(b)(3) (2009):

Whether or not the appellee has called attention to deficiencies in the appellant's abstract or Addendum, the Court may address the question at any time. If the Court finds the abstract or Addendum to be deficient such that the Court cannot reach the merits of the case, or such as to cause an unreasonable or unjust delay in the disposition of the appeal, the Court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies, and has fifteen days within which to file a substituted abstract, Addendum, and brief, at his or her own expense, to conform to Rule 4-2 (a)(5) and (8). Mere modifications of the original brief by the appellant, as by interlineation, will not be accepted by the Clerk. Upon the filing of such a substituted brief by the appellant, the appellee will be afforded an opportunity to revise or supplement the brief, at the expense of the appellant or the appellant's counsel, as the Court may direct. If after the opportunity to cure the deficiencies, the appellant fails to file a complying abstract, Addendum and brief within the prescribed time, the judgment or decree may be affirmed for noncompliance with the Rule.

Accordingly, we order Baptist Health to file a substituted brief, abstract, and addendum in the case within fifteen days from the entry of this order. While we have noted above examples of deficiencies in the Addendum, we encourage Baptist Health, prior to filing its substituted brief, to review our rules, the entire record, and their substituted brief to ensure that no additional deficiencies are present. *See Gentry v. Robinson*, 2009 Ark. 345 (per curiam). If Baptist Health fails to file a substituted brief and supplemental record within the time period specified, the circuit court's judgment may be affirmed for noncompliance with Rule 4-2. *Erin, Inc. v. Circuit Court of White County*, 368 Ark. 595, 247 S.W.3d 849 (2007). After service of the substituted brief and supplemental record, Appellees and Intervenor

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Appellees shall have an opportunity to revise or supplement their briefs in the time prescribed by the supreme court clerk, or to rely on the briefs previously filed in this appeal.

Rebriefing ordered.

Special Justices GEORGE ELLIS, JULIE GREATHOUSE, and CLARK MASON join in this opinion.

CORBIN, DANIELSON, and WILLS, JJ., not participating.