

ARKANSAS COURT OF APPEALS

No. CA08-1361

SYLVIA BELL, AARON BELL, AND
ALLEGRA BARKER

APPELLANTS

V.

THOMAS W. SIMMS AND LEANN
SIMMS

APPELLEES

Opinion Delivered 13 JANUARY 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. CV2007-607]

HONORABLE STEPHEN TABOR,
JUDGE

APPEAL DISMISSED

PER CURIAM

A boundary fight between neighbors led to claims for quiet title, trespass, and malicious prosecution. The circuit court quieted title in the disputed area to appellees Thomas and Leann Simms and awarded them damages for trespass. Sylvia Bell and her children, Aaron Bell and Allegra Barker, appeal pro se from the court's order. We must dismiss the appeal for lack of finality.

1. Finality. Allegra Barker filed a counterclaim against Mr. and Mrs. Simms for malicious prosecution, then voluntarily nonsuited it without prejudice before trial. The counterclaim was compulsory, arising out of Barker's attempt to defend her mother's claim to the property at issue. Ark. R. Civ. P. 13(a). Dismissal without prejudice did not dispose of the claim because Barker was free to re-file it. *Pro*



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Transp., Inc. v. Volvo Trucks N. Am., Inc., 96 Ark. App. 166, 168, 239 S.W.3d 537, 539 (2006). Therefore, the circuit court’s judgment left the claim unresolved, and the judgment was not a final order. *Bevans v. Deutsche Bank Nat’l Trust Co.*, 373 Ark. 105, 108–09, 281 S.W.3d 740, 743–44 (2008). Without a final order, we must dismiss the appeal. Our dismissal is without prejudice to another appeal after the nonsuited claim has been adjudicated on the merits, e.g., *S. County, Inc. v. First W. Loan Co.*, 315 Ark. 722, 725, 871 S.W.2d 325, 326 (1994), or the circuit court certifies the existing judgment pursuant to Ark. R. Civ. P. 54(b). *Pro Transp., Inc., supra*.

Because another appeal is possible, and in the interests of judicial efficiency, we make the following observations to help ensure that the appellate court can decide the merits the next time around if there is a next time.

2. Property description. A quiet-title order should contain a specific description of the disputed property. The order in this case does not. It therefore may require modification upon an appeal on the merits. E.g., *Heirs at Law of Butler v. Butler*, 2009 Ark. App. 660, at 9, 345 S.W.3d 225, 231. If appellants return to the circuit court for a final order, it would be an exercise in efficiency to add the required property description there.

3. Abstract and addendum. Our briefing rules present a special challenge for pro se appellants, but their choice to proceed without counsel does not absolve



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them from complying with the rules. The abstract and addendum submitted by these appellants fall so far short of the requirements of Ark. Sup. Ct. R. 4-2 that we will not attempt to recite every violation. We take this opportunity, however, to direct appellants toward those matters most in need of correction.

Appellants' addendum contains a transcript of a part of the bench trial. The addendum should be a compendium of pleadings, motions, other filed papers, orders, documents, and exhibits. Transcripts containing testimony, colloquies, and depositions do not belong there. Instead, they belong in the abstract, condensed and in the first person. Ark. Sup. Ct. R. 4-2(a)(5); *see generally Lackey v. Mays*, 100 Ark. App. 386, 269 S.W.3d 397 (2007). Appellants' abstract does not use the first person consistently, which it should. Also, appellants' addendum contains voluminous materials filed in connection with a summary-judgment motion that the circuit court denied before trial. An addendum should contain pleadings, motions, court papers, documents, and exhibits relevant to the issue on appeal. Ark. Sup. Ct. R. 4-2(a)(8). Appellants should consider carefully what parts of the summary-judgment papers and exhibits, if any, retained their importance after the court held a bench trial. The supreme court recently amended and clarified the briefing rules for appeals filed after 1 January 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 (per curiam). Appellants should study and follow these revised rules if



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they appeal again.

Appeal dismissed without prejudice.

Sylvia Bell, Aaron Bell, and Allegra Barker, pro se appellants.

Gean, Gean & Gean, by: *Roy Gean, III*, for appellees.