

**ARKANSAS COURT OF APPEALS**

DIVISION I

No. CA09-776

DIANA LANCASTER

APPELLANT

V.

RED ROBIN INTERNATIONAL,  
INC., STEVE REIGER, JASON  
RIDDLE, MATTHEW NATIVIDAD,  
AND KAYLA NEITZEL

APPELLEES

**Opinion Delivered** April 20, 2011

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. CV 2008-39-5]

HONORABLE XOLLIE DUNCAN,  
JUDGE

DISMISSED

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**DAVID M. GLOVER, Judge**

On May 19, 2010, we ordered rebriefing in this appeal because appellant Diana Lancaster had failed to abstract the numerous depositions filed in support of and in opposition to the motions for summary judgment. *Lancaster v. Reiger*, 2010 Ark. App. 437. Appellant subsequently filed a conforming brief. In reviewing this case on its merits, we have determined that the orders appealed from are not final. We therefore must dismiss this appeal without prejudice.

We set forth the procedural history in detail in our previous opinion and need not do so here. Diana Lancaster sued her employer, appellee Red Robin International, Inc. (a

restaurant), appellee Steve Reiger (Red Robin's general manager), appellee Jason Riddle (Red Robin's service manager), appellee Matthew Natividad (a co-worker), and appellee Kayla Neitzel (a co-worker) for slander and outrage in the Benton County Circuit Court. Appellant took a nonsuit of her outrage claim in 2008. In 2009, the trial court granted summary judgment to all appellees. It also imposed sanctions under Arkansas Rule of Civil Procedure 11 against appellant in favor of Natividad and Neitzel, and ordered appellant's attorney, Harry McDermott, to pay appellees \$1,000 in attorney's fees because of the way he handled a discovery dispute.

Appellant raises the following points on appeal: (1) that the circuit court erred in granting summary judgment to appellees; (2) that it abused its discretion in striking her amended complaint and second amended complaint and granting Natividad and Neitzel Rule 11 sanctions; and (3) that it abused its discretion in directing her attorney to pay appellees' attorney \$1,000 and in finding Red Robin's responses to discovery to be appropriate.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil (2010) provides that an appeal may be taken only from a final judgment or decree entered by the circuit court. The supreme court has held that a party that has several claims against another party may not take a voluntary nonsuit of one claim and appeal an adverse judgment as to the other claims when it is clear that the intent is to refile the nonsuited claim and thus give rise to the possibility of piecemeal appeals. *Haile v. Arkansas Power & Light Co.*, 322 Ark. 29, 907 S.W.2d 122 (1995); *Ratzlaff v. Franz Foods of Ark.*, 255 Ark. 373, 500 S.W.2d 379 (1973). This is so because a

voluntary nonsuit or dismissal leaves the plaintiff free to refile the claim, assuming there has been no previous dismissal. *Haile*, 322 Ark. at 32, 907 S.W.2d at 123; Ark. R. Civ. P. 41(a) (2010).

Arkansas Rule of Civil Procedure 54(b) (2010) permits an appeal from an order dismissing some of the claims or parties when a final order disposing of all claims has not yet been rendered, but the court must execute a proper Rule 54(b) certificate to do so. The circuit court has not issued a Rule 54(b) certificate in this case. Although neither party raises this issue, the lack of a Rule 54(b) certificate creates a jurisdictional situation that we must address prior to considering the merits of the arguments raised on appeal; the question of whether an order is final and subject to appeal is a jurisdictional question that this court will raise sua sponte. *Crockett v. C.A.G. Investments, Inc.*, 2010 Ark. 90, 361 S.W.3d 262. Because the voluntary nonsuit of appellant's outrage claim did not operate to make the orders appealed from final and appealable, this court lacks jurisdiction due to the unresolved issue, and this appeal must be dismissed without prejudice to refile at a later date. *Id.*

Dismissed.

PITTMAN and ROBBINS, JJ., agree.