

William T. SMITH, et al. v. ARKANSAS STATE
HIGHWAY COMMISSION

CA 87-26

728 S.W.2d 202

Court of Appeals of Arkansas
Opinion delivered April 22, 1987

APPEAL & ERROR — FINAL, APPEALABLE JUDGMENT. — Although an order setting aside a default judgment is not a final order from which an appeal will lie, a judgment rendered after the defendant has answered and after a trial at which he failed to appear is not a default judgment under ARCP Rule 55.

Motion to Dismiss Appeal; denied.

Q. Byrum Hurst, Jr., for appellant.

Philip N. Gowen, for appellee.

PER CURIAM. The appellee has moved to dismiss this appeal from a judgment of the Garland County Circuit Court, rendered after the appellee had answered and been notified of the trial date and after the trial court's order setting aside the judgment.

[1] The appellee correctly states that an order setting aside a default judgment is not a final order from which an appeal will lie. See *Schueck Steel, Inc. v. McCarthy Brothers Co.*, 289 Ark. 436, 711 S.W.2d 820 (1986). However, a judgment rendered after the defendant has answered and after a trial at which he failed to appear is not a default judgment under ARCP Rule 55. *Dawson v. Picken*, 1 Ark. App. 168, 613 S.W.2d 846 (1981). Since the judgment set aside by the trial court was not a default judgment, but rather a judgment entered after trial, we treat the trial court's order as one granting a new trial. Because this is a final and appealable order, the appellee's motion to dismiss the appeal is denied. *Day v. Day*, 20 Ark. App. 48, 723 S.W.2d 378 (1987); Ark. R. App. P. 2(a)(3).

Motion denied.