

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA 11-31

DAN BILLINGSLEY

APPELLANT

V.

PLANIT DIRT EXCAVATION &
CONCRETE, INC., and DESJOYAUX
POOLS OF ARKANSAS, INC.

APPELLEES

Opinion Delivered JUNE 22, 2011

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[NO. CV-08-1182-2]

HONORABLE RUSSELL ROGERS,
JUDGE

APPEAL DISMISSED

JOHN B. ROBBINS, Judge

Appellant Dan Billingsley appeals the order of the Saline County Circuit Court after a bench trial that awarded appellee Planit Dirt Excavation and Concrete, Inc.,¹ damages, costs, and attorney's fees for breach of contract. We dismiss for lack of a final order.

The parties contracted for the construction of a swimming-pool project on Dan's property in Benton, Arkansas. Verbal disagreement ensued over the second of four payments being due, Dan ordered Planit Dirt's owner J. R. Randleas and his employees from Dan's premises, and Planit Dirt filed suit for breach of contract and conversion of property. Dan

¹ The caption of the trial court filings included DesJoyaux Pools of Arkansas, Inc. as a plaintiff along with Planit Dirt. They apparently operate in tandem, with J. R. Randleas as the exclusive dealer in Jacksonville, Arkansas, for DesJoyaux pool products. DesJoyaux is headquartered in France, imports their products through Illinois, and distributes through United States dealers. For ease of reference, we refer only to Planit or Randleas in our discussion as the appellee.

countersued for breach of contract. After a bench trial, the judge found that Dan breached the agreement by ordering Planit Dirt off his property, not paying the second installment, and refusing to allow Planit Dirt to complete the contract. The judge awarded Planit Dirt \$19,741 in damages, plus court costs and attorneys fees, for a total judgment of \$21,253.15. Dan filed a timely notice of appeal, and he argues that the trial court clearly erred by: (1) not finding Planit Dirt to have breached the contract, (2) finding that Dan was required to complete his end of the contract upon Planit Dirt's breach, and (3) using an improper measure of damages because Dan should have been refunded his out-of-pocket costs for Planit Dirt's breach. We dismiss.

Planit Dirt's complaint contained two separate counts: (1) breach of contract, and (2) conversion. Dan filed a counterclaim against Planit Dirt for breach of contract. The order on appeal resolves only one issue after "the complaint of Planit Dirt was presented for trial," that being Planit Dirt's allegation of breach of contract.

Arkansas Rule of Appellate Procedure—Civil 2(a) (2010) permits appeals only from final orders of a trial court. An order must be final for the appellate court to have jurisdiction; thus we may consider this issue even though the parties have not raised it. *Deutsche Bank Nat'l Trust Co. v. Austin*, 2010 Ark. App. 753; *Le v. Nguyen*, 2009 Ark. App. 642. Pursuant to Rule 54(b) (2010) of the Arkansas Rules of Civil Procedure, an order in which fewer than all claims are adjudicated is not an appealable order unless the trial court expressly directs the entry of a final judgment to claims disposed of and expressly determines that there is no just reason for delay. *Century Indus., Inc. v. Reach-Assocs., LLC*, 2010 Ark. App. 455.

Cite as 2011 Ark. App. 449

In this case, the trial court did not expressly direct entry of a final judgment with regard to Planit Dirt's claim for conversion or Dan's counterclaim for breach of contract. Neither are mentioned in the order on appeal. We cannot infer that those claims were rendered defunct. Because there is no final order from which to appeal at this time, the appeal is dismissed without prejudice. *Deutsch Bank, supra*.

As a courtesy to the parties, we urge respective counsel to refer to Arkansas Supreme Court Rule 4-2 regarding brief content. By way of example, Dan's brief improperly included unnecessary documents in the addendum, such as an Order Concerning Assignment of Judges, a transcript of a deposition, an Order Denying Summary Judgment, an Order to Compel, and an Order of Mediation. As presented, these are not "material" as defined in Arkansas Supreme Court Rule 4-2(a)(5). In addition, deposition testimony, if deemed material to the issues on appeal, must be abstracted, not appended. Rule 4-2(a)(5)(A) and (a)(8). And any post-trial motion must be included in the addendum. Rule 4-2(a)(8). Should an appeal be filed after entry of a final order, we require compliance with briefing rules.

Appeal dismissed.

GRUBER and ABRAMSON, JJ., agree.