

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-288

LARRY D. DEWITT

APPELLANT

V.

ROBERTA S. SIMPSON

APPELLEE

Opinion Delivered October 26, 2011

APPEAL FROM THE YELL COUNTY
CIRCUIT COURT, SOUTHERN
DISTRICT [CV-2009-77]

HONORABLE DAVID McCORMICK,
JUDGE

DISMISSED WITHOUT PREJUDICE

DAVID M. GLOVER, Judge

The trial court granted appellee Roberta Simpson's request to reform deeds involving approximately 173 acres of land—171 of the acres were located north of the highway and the remaining two acres, which also contained the house where she resided, were south of the highway—that originally belonged to her father, R.J. Thomas. In 2001, R.J. conveyed the entire 173 acres to Roberta in two separate deeds because Virgil Thomas, appellee's brother, was contemplating a divorce. In describing the properties, however, one deed described the entire 173 acres, which included the two acres south of the highway; the other deed described the two-acre tract only. In 2006, after R.J. died, Roberta conveyed certain property to Virgil. According to her, she intended to convey the 171-acre tract but used the description contained in the deed from her father, which described the entire 173-acre tract. Thereafter, Virgil conveyed the property to his friend, appellant Larry Dewitt, using the same description.



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Dewitt then claimed the entire 173 acres, prompting Roberta to file the underlying complaint seeking reformation.

In the original complaint, Roberta named only Larry Dewitt as a defendant. However, because Larry was married and Virgil had died intestate, she amended her complaint on August 18, 2009, to add several other defendants: Rose Dewitt, Larry's wife; Laurel Thomas Woodward and John Wesley Thomas, Virgil's children; Joshua Thomas, Virgil's eight-year-old grandchild; and Cindy Thomas, the child's mother. The record shows "proof of service" on John Wesley Thomas and Laurel Thomas Woodward. A summons to Cindy Thomas is contained in the record, but there is no return of service for her in the addendum. The order appealed from lists only Larry Dewitt in the caption as the defendant; further, the discussion within the order does not mention any of the other defendants who were added with the amended complaint. Neither is there an order in the addendum showing dismissal of the additional parties. Finally, there is not a Rule 54(b) certificate.

Finality is a jurisdictional issue, and it is one that we must consider even if it is not raised by the parties. *Berry v. Wilson*, 2010 Ark. App. 854. With exceptions not applicable here, an appeal may be taken only from a final judgment or decree entered by the trial court. *Id.*; Ark. R. App. P.–Civ. 2(a)(1) (2010). An order is not final when it adjudicates fewer than all of the claims or the rights and liabilities of fewer than all of the parties. *Id.* For an order to be final and appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Id.*



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The order appealed from in this case is not final and appealable because, at a minimum, two of the heirs were served with the amended complaint, yet were not named in the order's caption or mentioned in the order's discussion of its holding, and no other order disposing of them is contained in the addendum. Because the order from which this appeal arises is not a final order, this court has no jurisdiction to hear the appeal. Accordingly, we dismiss the appeal without prejudice.

Dismissed without prejudice.

ROBBINS and WYNNE, JJ., agree.

Barham Law Office, P.A., by: *R. Kevin Barham*, for appellant.

David L. Eddy, for appellee.