ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA11-172

DAVID H. ARRINGTON OIL & GAS, INCORPORATED APPELLANT V. TONY E. SUTTERFIELD and JENA RENEA SUTTERFIELD APPELLEES	Opinion Delivered October 26, 2011 APPEAL FROM THE VAN BUREN COUNTY CIRCUIT COURT [NO. CIV-09-389] HONORABLE MICHAEL A. MAGGIO, JUDGE AFFIRMED AS MODIFIED

JOSEPHINE LINKER HART, Judge

David H. Arrington Oil and Gas, Incorporated (Arrington) appeals from an order of the Van Buren County Circuit Court dismissing its declaratory-judgment action. Arrington had counterclaimed for declaratory judgment, seeking a finding that no contract existed, after appellees Tony E. and Jena Renea Sutterfield (the Sutterfields) had sued Arrington over an oil-and-gas lease, alleging breach of contract, promissory estoppel, and fraud. Subsequent to Arrington filing its counterclaim, the Sutterfields voluntarily nonsuited their complaint and joined a class-action suit in federal court. On appeal, Arrington argues that the circuit court erred in dismissing the counterclaim because the trial court had jurisdiction to afford it declaratory relief. We affirm as modified.

Citing *Potter v. City of Tonitown*, 371 Ark. 200, 264 S.W.3d 473 (2007), Arrington argues that the trial court erred because a party cannot deprive a court of jurisdiction over a properly filed counterclaim by nonsuiting its complaint. It asserts that the trial court had a

duty to decide whether it was entitled to declaratory relief under our declaratory-judgment statute, Arkansas Code Annotated section 16-111-103 (Repl. 2006). Further, citing *Road Imp. Dist. No. 1 of Hot Spring County v. Henderson*, 155 Ark. 482, 244 S.W. 747 (1922), Arrington contends that a trial court errs when it refuses to exercise jurisdiction because of a pending action in federal court. We find this argument unconvincing.

We review an order granting a motion to dismiss for an abuse of discretion. *Doe v. Weiss*, 2010 Ark. 150. While we agree with the general proposition that a trial court of this state does not have the discretion to refuse to exercise its lawful authority, Arrington has failed to acknowledge the exceptions to this general rule that are associated with declaratory-judgment actions.

First, the plain wording of the statute gives the trial court hearing the case the discretion to even decide whether to render a judgment in some circumstances. Ark. Code Ann. § 16-111-108 (Repl. 2006). Here, the case in federal court has the potential to yield a money judgment for the plaintiffs, or exoneration under the lease and draft scheme that is the issue in this case. Conversely, if the Sutterfields prevailed in the declaratory-judgment action, additional litigation would be required to yield an enforceable judgment inasmuch as it would only decide whether Arrington and the Sutterfields indeed had a contract.

Second, as the supreme court discussed in *UHS of Arkansas, Inc. v. Charter Hosp. of Little Rock*, 297 Ark. 8, 759 S.W.2d 204 (1988), while a declaratory-judgment action can be a stand-alone cause of action, it is intended to "supplement rather than supersede ordinary causes of action." Accordingly, there exists a requirement that the trial court consider the

"propriety" of exercising jurisdiction, not merely whether it has the legal authority to do so. *Id.* The propriety of exercising jurisdiction depends in large part on whether the issue may be resolved in another court. *Id.* The trial court does not abuse its discretion even if the issue under consideration is pending, as in the case-at-bar, in federal court. *City of Fort Smith v. Didicom Towers, Inc.*, 362 Ark. 469, 209 S.W.3d 344 (2005). Here, Arrington does not suggest, nor do we conclude that the action pending in federal court will not resolve the controversy between Arrington and the Sutterfields. Accordingly, we hold that the trial court did not abuse its discretion in dismissing Arrington's declaratory-judgment action.

As a final note, we are aware that in *City of Fort Smith v. Didicom Towers, Inc.*, the supreme court stated that any dismissal of a declaratory-judgment action for the reason that the issue is pending in federal court will be without prejudice. We therefore modify the order of dismissal to reflect that the declaratory judgment in this case is without prejudice.

Affirmed as modified.

GRUBER and BROWN, JJ., agree.

Daily & Woods, PLLC, by: *Jerry L. Canfield*; and *Friday, Eldredge & Clark, LLP*, by: *William A. Waddell, Jr.*, and *James L. Phillips*, for appellant.

Holleman and Associates, P.A., by: *John T. Holleman* and *Maryna O. Jackson*, for appellees.