Cite as 2011 Ark. App. 727

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-394

BEN STEPHENS, BENNY GREENWAY, CINDY JARRELL, LENORA WILLIAMS, TOMMY WELCH, TAMMY TATRO, JIMMY JONES, ELDERS OF WESTERN CHEROKEE NATION OF ARKANSAS AND MISSOURI; AND JUNE WILES, HAROLD ALDRIDGE, NANCY MOUSER, DENZIL POWELL, GARY GOLDEN, ROD JOHNSON, ANNETTE WELCH, DANIEL SCHMIDT, JEAN HILL, KRIS LYLE, DOMINGO DOMINQUEZ, DOYNE CANTRELL, TRIBAL COUNCIL OF WESTERN CHEROKEE NATION OF ARKANSAS AND MISSOURI
APPELLANTS

V.

BRENT BREDEMEYER, CARY KUYKENDALL, LARRY ARMSTRONG, CURTIS WILSON, AND MIKE DUFF
APPELLEES

Opinion Delivered November 30, 2011

APPEAL FROM THE POLK COUNTY CIRCUIT COURT
[NO. CV 2010-87]

HONORABLE J.W. LOONEY, JUDGE

APPEAL DISMISSED

ROBIN F. WYNNE, Judge

This appeal involves a dispute in which two rival groups claim entitlement to use the corporate name Western Cherokee Nation of Arkansas and Missouri, Inc. The Polk County Circuit Court held that appellees were entitled to use the corporate name and enjoined appellants from using the corporate name or otherwise doing business under the corporate name. On appeal, appellants argue that the circuit court erred in granting the injunction because the corporation was not a valid, functioning corporation and that there was no proof

that there would be irreparable harm to the corporation if the injunction were not granted. We must dismiss this appeal because the order appealed from is not a final, appealable order.

Whether an order is final and appealable is a matter going to the jurisdiction of the appellate court, and it is an issue that the appellate court has a duty to raise on its own motion. *Dobbs v. Dobbs*, 99 Ark. App. 156, 258 S.W.3d 414 (2007). Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure–Civil provides that an appeal may be taken only from a final judgment or decree entered by the circuit court. Here, the circuit court's order required appellees to develop a plan by January 1, 2011, for holding a membership election by December 31, 2011. The plan was to be submitted to the court for approval and implementation. There is nothing in either the addendum or the record to show either that a plan was presented to the court by the January 1, 2011 deadline or that the election has been held. An order that contemplates further action by a party or the court is not a final, appealable order. *Fisher v. Chavers*, 351 Ark. 318, 92 S.W.3d 30 (2002). The requirement that an order be final to be appealable is a jurisdictional requirement; the purpose of the finality requirement is to avoid piecemeal litigation. *Id*.

Neither can we bring this case within other possible avenues of appellate jurisdiction. Although Arkansas Rule of Civil Procedure 54(b) permits an appeal from an order not otherwise final, there is no Rule 54(b) certificate in this case. Arkansas Rules of Appellate Procedure–Civil Rule 2(a)(6) allows a party to appeal from an interlocutory order "by which an injunction is granted, continued, modified, refused, or dissolved or by which an application to dissolve or modify an injunction is refused." This provides a separate basis for appeal apart from the general provisions of Rule 2(a)(1). *See E. Poinsett Cty. Sch. Dist. No. 14 v. Massey*,

317 Ark. 219, 876 S.W.2d 573 (1994). However, Rule 5(a) requires that the record in appeals filed under Rule 2(a)(6) be filed with the appellate court within thirty days after entry of the order. Our supreme court has held that this requirement is jurisdictional. *See Palmer v. Evans*, 256 Ark. 917, 511 S.W.2d 157 (1974) (holding based on superseded Ark. Stat. Ann. § 27-2102). In the present case, the order appealed from was entered on December 30, 2010. The notice of appeal was filed on January 18, 2011. However, the record was not filed with our clerk until April 15, 2011, well in excess of thirty days after the order was entered.

Appeal dismissed.

ABRAMSON and BROWN, JJ., agree.