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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 11-739

ARKANSAS DEPARTMENT OF HUMAN SERVICES APPELLANT V. A.M., SONJA MITCHELL, AND CHRISTOPHER MATTHEWS, SR. APPELLEES	**Opinion Delivered** January 18, 2012 APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. JV-11-284-6] HONORABLE EARNEST E. BROWN, JR., JUDGE DISMISSED WITHOUT PREJUDICE

DOUG MARTIN, Judge

The Arkansas Department of Human Services (DHS) appeals from an order of the Jefferson County Circuit Court directing DHS to provide assistance to appellee A.M., a pregnant teenager, in the form of paying for school uniforms and maternity clothing. We must dismiss the appeal without prejudice for lack of a final, appealable order.

After filing a family-in-need-of-services (FINS) petition on April 14, 2011, the Juvenile Office of Jefferson County filed a "notice of intent" with DHS on April 28, 2011, informing DHS that the Juvenile Office intended to recommend that DHS provide services to A.M. and her family. The notice stated that the Juvenile Office believed that DHS's services were necessary "to assist mother with essential basic items to prevent removal" and provided that the Juvenile Office's recommendations would be for "assistance with school uniforms, maternity clothing, and items for [A.M.'s] baby."

DHS filed written objections to the notice of intent on May 2, 2011, noting first that the court lacked jurisdiction to enter any orders regarding a baby that had not been born yet.[1] In addition, DHS argued that, while the circuit court could enter an order to prevent removal of a juvenile from the juvenile's home, the provision of school uniforms, maternity clothing, and baby items were not services that would prevent removal of a juvenile from the family home. DHS noted that A.M. had not been subject to neglect, nor was there any allegation that, by remaining in her residence, there was an immediate danger to the health or physical well-being of the child. Because DHS could discern no reason for removing the child from the home, it asserted that there was no basis for claiming that the provision of maternity clothes and school uniforms would prevent removal.

At a hearing on May 12, 2011, however, the circuit court denied DHS's objection and found that the "items that are to be provided would assist in preventing removal." Referring to the "prior history with the family within the juvenile court system," the court stated that, "if these services are not provided, the court may have to take a hold, and we don't want that to occur. So the court is making a finding that these services are necessary to prevent removal." The court entered an order for family services that same day, directing DHS to "provide assistance with school uniforms, maternity clothing, and items for [A.M.'s] baby."

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[1]*See* Ark. Code Ann. § 9-27-303(32) (Repl. 2006) (defining a "juvenile" as an individual who is from birth to eighteen years of age); *Ark. Dep't of Human Servs. v. Collier*, 351 Ark. 506, 95 S.W.3d 772 (2003) (holding that circuit court exceeded its authority by placing an unborn fetus in DHS custody and requiring DHS to pay for mother's prenatal care).

DHS filed a motion to intervene for the limited purpose of contesting the FINS order and a motion to reconsider on May 23, 2011. DHS specifically argued that the court's order did not comply with Arkansas Code Annotated section 9-27-332(a)(2)(B)(ii) (Repl. 2009), which requires the court to make written findings outlining how each service DHS is ordered to provide is intended to prevent removal. DHS also pointed out that it would not remove a child from home on the basis that the child did not have maternity clothing or because the child's family could not afford such clothing. Finally, DHS reiterated that the circuit court lacked jurisdiction to enter any orders regarding a baby that had not been born yet.

The circuit court held a hearing on DHS's motion on June 1, 2011. At that hearing, no witnesses testified and no evidence was presented. DHS, however, again said that it did not understand how maternity clothing and school uniforms were services that were designed to prevent the removal of the juvenile from the family home. The court replied that, based on its "extensive Family in Need of Services history and delinquency history with the family," the required items were necessary to prevent educational neglect from occurring and to keep A.M. enrolled in school. DHS replied that "educational neglect" did not fall under the definition of "severe maltreatment" that would warrant removing a juvenile from her home. The court retorted that DHS "should [remove the juvenile] if they're [sic] not going to school." The court also stated that it was "finding that the services are needed to prevent maltreatment, and whether or not it's severe, it depends on the trier of fact, and I'm finding that to prevent a situation from happening, and that's what we're ordering these services for."

The circuit court entered an order denying DHS's motion to reconsider on June 7, 2011. Although the court agreed with DHS that the portion of its previous order directing DHS to purchase items for the unborn baby was premature and set aside that portion of the order, the court nonetheless found "that it is necessary for the Department to purchase [school uniforms and maternity clothing] in order to prevent removal of the juvenile from the family home because the Department would be preventing educational neglect." DHS filed a timely notice of appeal on June 7, 2011.

Before addressing the merits of DHS's arguments on appeal, however, we must address whether there is a final, appealable order in this case. At the conclusion of the June 1, 2011 hearing, counsel for DHS asked the trial court for a Rule 54(b) certification. The trial court granted the request, and the court's order denying DHS's motion for reconsideration contains the following statement:

> The court grants the Department's request for a Rule 54(b) certification and hereby finds the following: With respect to the issues determined by the above judgment, the court hereby certifies, in accordance with Rule 54(b)(1), Ark. R. Civ. P., that it has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the judgment shall be a final judgment for all purposes.

Rule 54(b) of the Arkansas Rules of Civil Procedure deals with the finality of orders in connection with judgments upon multiple claims or involving multiple parties. *See Hanners v. Giant Oil Co. of Ark., Inc.*, 369 Ark. 226, 253 S.W.3d 424 (2007). The rule provides, in pertinent part:

> (1) Certification of Final Judgment. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final

> judgment as to one or more but fewer than all of the claims or parties only upon an express determination, supported by specific factual findings, that there is no just reason for delay and upon an express direction for the entry of judgment. In the event the court so finds, it shall execute the following certificate, which shall appear immediately after the court's signature on the judgment, and which shall set forth the factual findings upon which the determination to enter the judgment as final is based:
>
> Rule 54(b) Certificate
>
> With respect to the issues determined by the above judgment, the court finds:
>
> [Set forth specific factual findings.]
>
> Upon the basis of the foregoing factual findings, the court hereby certifies, in accordance with Rule 54(b)(1), Ark. R. Civ. P., that it has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the judgment shall be a final judgment for all purposes.
>
> Certified this _____ day of _____, _____.
>
> _____
> Judge

A trial court's Rule 54(b) findings and certifications are reviewable for abuse of discretion, with some deference given to the trial court's decision, since that court is the one most likely to be familiar with the claims and the parties in the case. *Bayird v. Floyd*, 2009 Ark. 455, 344 S.W.3d 80. Because it involves a question of our jurisdiction of the appeal, we are required to review the adequacy of a Rule 54(b) certification sua sponte, if necessary. *S. Farm Bureau Cas. Ins. Co. v. Williams*, 2010 Ark. App. 232. The appellate courts have held that strict compliance with Rule 54(b) is a prerequisite to appellate jurisdiction. *Id.* (citing *Bayird*, *supra*). Merely tracking the language of the rule will not suffice; it must be supported by "specific factual findings, that there is no just reason for delay." *Id.* at 1. The rule is intended to permit review before the entire case is concluded, but only in those exceptional

situations where a compelling, discernable hardship will be alleviated by an appeal at an intermediate stage. *Bank of Ark., N.A. v. First Union Nat'l Bank*, 342 Ark. 705, 30 S.W.3d 110 (2000).

Under the rule, the trial court may enter a final judgment or order in a multiple claims or multiple parties case by making an *express determination* that there is no reason to delay an appeal. *Kowalski v. Rose Drugs of Dardanelle, Inc*, 2009 Ark. 524, 357 S.W.3d 432 (emphasis in original). In other words, the court must *factually set forth reasons* in the final judgment, order, or the record, which can then be abstracted, explaining why a hardship or injustice would result if an appeal is not permitted. *Id*. (citing *Franklin v. OSCA, Inc.*, 308 Ark.409, 825 S.W.2d 812 (1992) (emphasis in original)). Accordingly, under the terms of Rule 54(b), the final judgment, order or decree must contain specific facts supporting the trial court's determination that there is some danger of hardship or injustice which would be alleviated by an immediate appeal. *Id*.

In the instant case, the trial court's Rule 54(b) certificate is inadequate. The certificate merely tracks part of the language of the sample certificate found within the rule. It does not attempt to provide a factual basis for the court's determination that there is no just reason for delay of the entry of a final judgment, let alone explain what other matters remain unresolved. Given the paucity of information in the circuit court's Rule 54(b) certification, we conclude that the appeal must be dismissed without prejudice. *See Carter v. Cline*, 2011 Ark. 474, 385 S.W.3d 745 (an appeal that fails to comply with Rule 54(b) or lacks a proper

certification will be dismissed without prejudice, and the parties will be permitted to file at a later date).

Dismissed without prejudice.

GRUBER and BROWN, JJ., agree.

Tabitha Baertels McNulty, Office of Chief Counsel, for appellant.

No response.