

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA11-1015

SMITH LAND COMPANY, LLC,
SPRINGHILL LAND & TIMBER CO.,
LLC, and A. LAMAR SMITH

APPELLANTS

V.

JOHN HANCOCK MUTUAL LIFE
INSURANCE CO.

APPELLEE

Opinion Delivered February 22, 2012

APPEAL FROM THE COLUMBIA
COUNTY CIRCUIT COURT,
[No. CV-2008-182-4]

HONORABLE SUSAN O. HICKEY,
JUDGE

DISMISSED

LARRY D. VAUGHT, Chief Judge

Appellee John Hancock Mutual Life Insurance Company filed a complaint against appellants Smith Land Company, LLC, Springhill Land and Timber Company, LLC, and A. Lamar Smith. In the suit, appellee sought to confirm its rights to certain timber property and requested quiet title, ejectment, declaratory judgment, injunctive relief, and breach of warranty and title. Appellants answered, contending that appellee's title did not contain a description sufficient enough to pass title, and counterclaimed for the timber rights to the property. IP Timberlands Operating Company, Ltd., the appellants' predecessor in title, was originally brought into the suit by an amended complaint filed by appellee on May 29, 2010.

On November 5, 2010, appellee filed a motion for summary judgment. Appellants responded and filed a corresponding motion for summary judgment. A second amended complaint was filed by appellee on December 13, 2010, seeking reformation of the deed based



on mutual mistake. In an order signed on June 17, 2011, and entered on June 22, 2011, the trial court found that the description in appellee’s deed was sufficient to convey the disputed timber rights. The court also granted appellee’s motion for summary judgment and denied appellants’ corresponding motion. On July 19, 2011, appellants filed a notice of appeal with our court claiming three separate points of error.

However, on September 30, 2011,¹ the trial court signed a second “ORDER.” In this subsequent order the trial court stated that

as part of the Order, the Court confirms that it was the intent of the Court that the “Order” and judgment entered by it on June 17, 2011[,] was intended to be a final appealable Order in this matter and was intended to resolve all claims or counterclaims by and between John Hancock and all party Defendants, *other than IP Timberlands Operating Company, Ltd.* To the extent that any claims or counterclaims were not addressed in the “order” and judgment entered on June 17, 2011, and such claims or counterclaims not addressed in that Order shall be considered denied and dismissed.

(Emphasis added.) Unfortunately, the only notice of appeal contained in the addendum (also the only one included in the record) is dated July 19, 2011, and is from the trial court’s June 22, 2011 order. There is no notice of appeal from the subsequent order filed on October 3, 2011, dismissing appellee’s claim against IP Timberlands (and specifically noting that IP Timberlands had not been dismissed in the prior order).

While neither party raises this issue, the question of whether an order is final and subject to appeal is a jurisdictional question that we will raise sua sponte. *Jones v. Huckabee*, 363 Ark. 239, 240–41, 213 S.W.3d 11, 12–13 (2005). The trial court’s order from which appellants appeal is not a final, appealable order as required by Arkansas Rule of Appellate

¹This order was signed on September 30, 2011, but was not file marked until October 3, 2011.



Procedure—Civil 2 and Arkansas Rule of Civil Procedure 54(b). Rule 54(b) provides, in pertinent part, that

any judgment, order, or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of *fewer than all the parties* shall not terminate the action as to any of the claims or parties, and the judgment, order, or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all of the parties.

Ark. R. Civ. P. 54(b) (emphasis added). In this case, there is neither a Rule 54(b) certification nor a notice of appeal filed from the final order. We have no jurisdiction to hear this case, and we dismiss. *Moses v. Hanna's Candle Co.*, 353 Ark. 101, 110 S.W.3d 725 (2003).

Appeal dismissed.

GRUBER and GLOVER, JJ., agree.

Kinard, Crane, Butler & Phillips, P.A., by: *Ryan P. Phillips* and *M. Mike Kinard*, for appellants.

Friday, Eldredge & Clark, LLP, by: *Bruce B. Tidwell*, for appellee.