

ARKANSAS COURT OF APPEALS

No. CA11-915

ESTHER EDGIN, MARY
MCCULLOUGH, ET AL.

APPELLANTS

V.

CENTRAL UNITED LIFE
INSURANCE COMPANY

APPELLEE

Opinion Delivered March 14, 2012

APPEAL FROM THE
INDEPENDENCE COUNTY
CIRCUIT COURT,
[CV 2007-261-4]

HONORABLE TIM WEAVER,
JUDGE

REMANDED FOR
SUPPLEMENTATION OF THE
RECORD AND REBRIEFING

PER CURIAM

Esther Edgin; Mary McCullough; Carolyn Peterson, Special Administratrix of the Estate of Terrence Peterson; and Nancy Whitman, Executrix of the Estate of Michael Whitman, bring an appeal from an order of the Independence County Circuit Court granting summary judgment to appellee Central United Life Insurance Company. Appellants, along with several other plaintiffs, sued appellee for breach of contract, bad faith, fraud and suppression, and for a twelve-percent statutory penalty and attorney's fees under Arkansas Code Annotated section 23-79-208 for appellee's alleged underpayment of benefits on cancer policies. Before 2003, appellee had paid "actual charges" billed by health-care providers; in 2003, it began to pay "actual charges" at the discounted amount that the providers had received from government entities and insurance companies.



Appellee moved for partial summary judgment on the bad-faith and punitive-damages claims. In its order granting summary judgment to appellee on those claims, the trial court noted that appellants had settled the breach-of-contract and fraud claims; it did not mention the claims for the twelve-percent penalty and attorney's fees under section 23-79-208. In another order entered the same day, the trial court recognized that six other plaintiffs had settled their claims and dismissed them with prejudice; however, neither of the orders addressed the claims of a number of other plaintiffs. According to appellants, eight other plaintiffs were voluntarily dismissed and another plaintiff, Doyle Evans, was included in a consent order of dismissal. Appellants refer us to a docket entry dated September 17, 2009, which stated that an order dismissing the claims of eight other plaintiffs was entered, and another docket entry that referred to a consent order dismissing Doyle Evans's complaint on December 23, 2009. However, those orders are not found in the record or the addendum. Additionally, the original, first amended, and second amended complaints are in the record but not in the addendum. According to a docket entry, Darla Adams, who was listed as a plaintiff in the original complaint, was granted an order of nonsuit on February 7, 2008. James Jordan, who was also listed as a plaintiff in the original complaint, was shown in the docket as having obtained an order of nonsuit on March 13, 2008. Neither order is in the record or addendum. Further, the summary judgment did not dispose of or address appellants' claims for the twelve-percent penalty and attorney's fees under section 23-79-208.

Because the record and addendum do not contain orders adjudicating the claims of some of the plaintiffs or for the statutory penalty and attorney's fees, it appears that the order



from which appellants have appealed is not final. The question of whether an order is final and subject to appeal is a jurisdictional question that this court will raise on its own. *Bevans v. Deutsche Bank Nat'l Trust Co.*, 373 Ark. 105, 281 S.W.3d 740 (2008). Absent a certificate from the circuit court directing that the judgment is final, an order that fails to adjudicate all of the claims as to all of the parties is not final for purposes of appeal. *Id.*; Ark. R. Civ. P. 54(b)(2) (2011). Here, the record does not include a Rule 54(b) certificate; it is, therefore, likely that there is not yet a final order and that this court has no jurisdiction to hear the appeal.

This appeal, however, is upon an abbreviated record. Under Arkansas Rule of Appellate Procedure—Civil 6(c) (2011), we shall not affirm or dismiss a case based on an abbreviated record if the record was abbreviated in good faith either by agreement or without objection from the appellee. Appellee has not objected to the abbreviated record. In light of Rule 6, recognizing that this action involves both multiple parties and claims, we allow appellants the opportunity, within twenty-one days from this date, to supplement the record so that we can determine whether the judgment appealed from is final. *See Thomas v. Avant*, 369 Ark. 211, 252 S.W.3d 135 (2007); *Ludwig v. Bella Casa, LLC*, 2009 Ark. App. 354; *Sunbelt Bus. Brokers of Ark., Inc. v. James*, 2009 Ark. App. 367. The supplemental record shall include all claims for relief, and all orders disposing of any party to, or any claim presented in, this proceeding. We strongly encourage counsel, prior to filing the supplemental addendum, to review our rules as well as the addendum to ensure that no additional deficiencies are present.



Cite as 2012 Ark. App. 216

Appellants will then be required to file a substituted abstract, brief, and addendum that includes the additional pleadings and orders, within fifteen days after the supplemental record is filed, in keeping with the requirements of Arkansas Supreme Court Rule 4-2 (2011). *Id.* The addendum contained in the filed brief is required to contain all relevant documents that are essential to an understanding of the case and this court's jurisdiction on appeal. *See Ark. Sup. Ct. R. 4-2(a)(8); Harrill & Sutter, PLLC v. Farrar*, 2011 Ark. 181; *Bulsara v. Watkins*, 2010 Ark. 453. Appellee may file a substituted response brief within fifteen days after appellants' brief is filed or it may rely on its former brief. Appellants' reply brief, if any, will be due fifteen days after appellee files its brief.

Remanded for supplementation of the record and rebriefing.

Hare, Wynn, Newell & Newton, LLP, by: *Paul Byrd* and *Nolan E. Awbrey* (pro hac vice), for appellants.

Womack, Landis, Phelps & McNeill, P.A., by: *Jeffrey Puryear* and *Ryan Wilson*; *Post Law Firm*, by: *Jerry Post*; and *Rushton, Stakely, Jonston & Garrett, P.A.*, by: *Dennis Bailey*, for appellee.