

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-52

MELISSA ANN YOUNG ET AL.
APPELLANTS

V.

BRITTE SMITH, M.D., ET AL.
APPELLEES

Opinion Delivered May 16, 2012

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. CV-2007-2372-4]

HONORABLE MARY ANN GUNN,
JUDGE

REMANDED FOR
SUPPLEMENTATION OF THE
RECORD; REBRIEFING ORDERED

JOHN MAUZY PITTMAN, Judge

This is an appeal following a judgment in favor of several defendants in a medical-malpractice case. The appellants' appeal is focused on the trial court's decision to grant partial summary judgment to Washington Regional Medical Center on statute-of-limitations grounds and its decision that appellants could not substitute Washington Regional Medical Center for a John Doe defendant. Appellants argue that the trial court erred in so ruling. We remand for supplementation of the record and rebriefing so that we may determine whether the order appealed from is final for purposes of appeal.

The question of whether an order is final and subject to appeal is a jurisdictional question that the court will raise on its own. *Downing v. Lawrence Hall Nursing Center*, 368 Ark. 51, 243 S.W.3d 263 (2006). Subject to enumerated exceptions not applicable here, an appeal may be taken only from a final judgment or decree entered by the trial court. Ark. R.



App. P.–Civ. 2(a)(1). An order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not final in the absence of certification by the trial court pursuant to Ark. R. Civ. P. 54(b). Although no such certification appears in this record, neither does any order dismissing one of the original named parties, Dr. Thomas Bradford, from the lawsuit. However, we cannot be certain that Dr. Bradford was not in fact dismissed from the lawsuit because appellants designated a partial record on appeal, and, while appellees did supplement the record, they also designated only specific parts of the record.

Arkansas Rule of Appellate Procedure–Civil 6(c) provides that, where the record is abbreviated in good faith by agreement or without objection of the parties, the appellate court shall not affirm or dismiss the appeal without notice to appellant and reasonable opportunity to cure the deficiency. Consequently, we allow appellants the opportunity, within twenty-one days from the date of this opinion, to supplement the record so that we can determine whether the judgment appealed from was final. *See Edgin v. Central United Life Insurance Co.*, 2012 Ark. App. 216. Appellants shall file a substituted abstract, brief, and addendum that includes the additional material within fifteen days after the supplemental record is filed, in keeping with the requirements of Arkansas Supreme Court Rule 4-2. The addendum accompanying the brief is required to contain all relevant documents that are essential to an understanding of the case and this court’s jurisdiction on appeal. Appellees may file a substituted response brief within fifteen days after appellants’ brief is filed, or they may rely on their former brief. Appellants’ reply brief, if any, will be due fifteen days after appellees



Cite as 2012 Ark. App. 340

file their brief. Counsel are encouraged to review our rules prior to filing the substituted abstract, brief, and addendum to ensure that no additional deficiencies are present.

Remanded for supplementation of the record; rebriefing ordered.

HART and WYNNE, JJ., agree.

Taylor Law Partners, LLP, by: *Timothy L. Brooks*, for appellants.

Davis, Clark, Butt, Carithers & Taylor, PLC, by: *Constance G. Clark, Kelly Carithers*, and *Colin M. Johnson*, for appellees.