

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA 12-39

CHESAPEAKE EXPLORATION, LLC
APPELLANT

V.

THOMAS W. WHILLOCK and
GAYLA WHILLOCK

APPELLEES

Opinion Delivered June 20, 2012

APPEAL FROM THE VAN BUREN
COUNTY CIRCUIT COURT
[NO. CV-2010-37]

HONORABLE MICHAEL A. MAGGIO,
JUDGE

DISMISSED

ROBIN F. WYNNE, Judge

This is a contract case in which Chesapeake Exploration, LLC, appeals from the circuit court's order granting summary judgment to Thomas and Gayla Whillock. Because the circuit court's order lacks finality, we dismiss the appeal.

In January 2008, the Whillocks entered into an oil-and-gas lease with Chesapeake in exchange for a one-time \$120,000 bonus payment and future royalties. The lease contained an express warranty of title. However, Chesapeake later learned that the Whillocks did not own the mineral rights and had no right to convey them. In April 2009, Chesapeake sent the Whillocks a letter requesting the return of the \$120,000 bonus payment and enclosing a release of the oil-and-gas lease. The Whillocks did not return the money.

In February 2010, Chesapeake filed a complaint in circuit court claiming breach of warranty and unjust enrichment. The Whillocks answered and filed a counterclaim in which



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they sought damages based on promissory estoppel and fraud. On June 16, 2011, the Whillocks moved for summary judgment, arguing that Chesapeake's release voided the contract, precluding any legal action upon it. Likewise, Chesapeake filed a motion for summary judgment on June 23, 2011, relying on the express warranty in the original lease and the Whillocks' refusal to return the bonus payment.

After a hearing held on August 25, 2011, the circuit court entered an order granting the Whillocks' motion for summary judgment, finding that Chesapeake had no cause of action for breach of contract because it had rescinded the original lease through its 2009 release. Chesapeake then filed a motion for clarification, asking the court to make further findings regarding the return of the \$120,000 and Chesapeake's unjust-enrichment claim. On October 7, 2011, the court entered an order clarifying summary judgment in which it found that the 2009 release acted as a general release extinguishing all claims Chesapeake might have resulting from the transaction. It further found that the invalidity of the original lease did not resurrect a claim for unjust enrichment and that Chesapeake was not entitled to restitution for the bonus payment. Chesapeake filed a timely notice of appeal.

Chesapeake raises five points on appeal, arguing first that its 2009 release of the oil-and-gas lease did not amount to a rescission, then offering four alternative arguments for reversal. We cannot reach the merits of Chesapeake's arguments because there is no final, appealable order in the record. Rule 2 of the Arkansas Rules of Appellate Procedure—Civil requires that a judgment, order, or decree be final in order to take an appeal, with certain



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exceptions not applicable here. Absent a certificate from the circuit court directing that the order is final, an order that adjudicates fewer than all the claims does not terminate the action. Ark. R. Civ. P. 54(b)(2) (2011).

Neither the order granting summary judgment nor the order clarifying summary judgment addresses the Whillocks' counterclaim for damages. After reviewing the entire record, we have found no other order of the court—written or otherwise—that disposes of the outstanding claim. Nor did the circuit court certify finality pursuant to Arkansas Rule of Civil Procedure 54(b). Therefore, we do not have a final, appealable order, and the case must be dismissed.

Dismissed.

GLOVER and BROWN, JJ., agree.

Danielson Law Firm, PLLC, by: *Erik P. Danielson*, for appellant.

Morgan Law Firm, P.A., by: *M. Edward Morgan*, for appellees.