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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA11-1095

DELANE WRIGHT, LINDA WRIGHT, and XTO ENERGY, INC. APPELLANTS V. NANCY E. VIELE ET AL. APPELLEES	**Opinion Delivered** September 5, 2012 APPEAL FROM THE VAN BUREN COUNTY CIRCUIT COURT [NO. CV 2008-212] HONORABLE RHONDA K. WOOD, JUDGE DISMISSED

ROBIN F. WYNNE, Judge

This appeal concerns the validity of a 1991 decree that quieted title to certain mineral interests in appellants Delane and Linda Wright. The Van Buren County Circuit Court concluded that the 1991 decree was void because not all of the parties claiming an interest were made parties or properly served by publication in the quiet-title action. Based on that conclusion, the circuit court granted summary judgment quieting title to the mineral interests in appellees.[1] The Wrights and XTO Energy, Inc., an assignee of oil-and-gas leases executed by the Wrights, separately appeal, contending that the prior decree was valid. We cannot reach the merits of the appeal because the order appealed from is not final. We must, therefore, dismiss the appeal without prejudice.

[1]The appellees are Nancy Viele; PEC Minerals, LP; Stephanie Darnell; Timothy Hewett; Colonial Royalties Limited Partnership; Pentagon Oil Co.; and Chaparral Royalty Co.

On August 6, 1990, the Wrights filed a quiet-title action in the Van Buren County Chancery Court. A decree quieting title to both the surface interest and the mineral interest in the Wrights was entered on December 4, 1991. The present case began when various plaintiffs filed suit against the Wrights for declaratory judgment seeking to set aside the 1991 quiet-title decree. These plaintiffs later voluntarily dismissed their case.

Appellees filed a motion to intervene and third-party complaint in which they alleged that they were not given notice of the filing of the complaint that resulted in the December 1991 quiet-title decree. Appellees alleged that the service by warning order in the quiet-title action was defective and that the Wrights failed to make a diligent inquiry as to the whereabouts of appellees or their predecessors in title. In their prayer for relief, appellees asked that the 1991 decree be declared null and void and that they be awarded damages for slander of title to include costs and attorney's fees. The Wrights and Chesapeake answered the third-party complaint.

On March 2, 2011, appellees filed an amended third-party complaint naming XTO, SEECO, and a number of others as additional defendants, asserting they may claim a mineral interest in the subject property. The Wrights, SEECO, Chesapeake, and XTO answered the amended third-party complaint and pled various affirmative defenses.

After the parties filed cross-motions for summary judgment, the circuit court entered a written order on September 16, 2011, granting appellees' motion for summary judgment and declaring the 1991 quiet-title decree void. Appellees' claim for slander of title is not

addressed in the circuit court's order.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure–Civil provides that an appeal may be taken from a final judgment or decree entered by a circuit court. Whether an order is final and appealable is a matter going to the jurisdiction of the appellate court, and it is an issue that the appellate court has a duty to raise on its own motion. *Capitol Life & Accident Ins. Co. v. Phelps*, 72 Ark. App. 464, 37 S.W.3d 692 (2001). The rule that an order must be final to be appealable is a jurisdictional requirement, observed to avoid piecemeal litigation. *Id.* If a suit has more than one claim for relief or more than one party, an order or judgment adjudicating fewer than all claims and all parties is neither final nor appealable. Ark. R. Civ. P. 54(b)(2).

Here, appellees' complaint included a claim for slander of title that was never addressed. Thus, the judgment now being challenged is not final. *E.g.*, *Hambay v. Williams*, 335 Ark. 352, 980 S.W.2d 263 (1998); *Strack v. Capital Servs. Grp., Inc.*, 87 Ark. App. 202, 189 S.W.3d 484 (2004). The circuit court may certify an otherwise nonfinal order for an immediate appeal by executing a certificate pursuant to Ark. R. Civ. P. 54(b)(1); however, no such certification was made in this case. We, therefore, must dismiss the appeal without prejudice. *State Farm Mut. Auto. Ins. Co. v. Thomas*, 312 Ark. 429, 850 S.W.2d 4 (1993); *Spill Responders, Inc. v. Felts*, 2009 Ark. App. 669.

Dismissed.

GLOVER and BROWN, JJ., agree.

Law Office of Kent Tester, P.A., by: *Kent Tester*; and *Vincent P. France*, for appellants Delane Wright and Linda Wright.

Hardin, Jesson & Terry, PLC, by: *Robert M. Honea* and *Jacqueline Cronkhite*, for appellant XTO Energy, Inc.

Graddy & Adkisson, LLP, by: *Larry Graddy*; and *Halstead Law Firm*, by: *Kelly Halstead*, for appellees.