

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA11-993

BEN S. BRANN III, TRUSTEE OF THE
BEN S. BRANN III REVOCABLE
TRUST AND ELWANDA M. BRANN,
TRUSTEE OF THE ELWANDA M.
BRANN REVOCABLE TRUST

APPELLANTS

V.

BUDDY HULETT AND SANDRA
HULETT

APPELLEES

Opinion Delivered October 10, 2012

APPEAL FROM THE JACKSON
COUNTY CIRCUIT COURT
[NO. CV-2009-41]

HONORABLE PHILIP SMITH,
JUDGE

DISMISSED

RAYMOND R. ABRAMSON, Judge

Ben Brann III and Elwanda Brann, as trustees of their respective revocable trusts, appeal from the circuit court's decision resolving a land dispute between them and appellees, Buddy and Sandra Hulett. The Branns and Hulett's own adjacent farms in Jackson County: the western boundary of the Brann property and eastern boundary of the Hulett property were in dispute. The Hulett's filed a complaint, arguing that a road built by the Branns encroached on their property. They requested ejectment, removal of the road, and damages. In the alternative, the Hulett's argued that they had acquired title by adverse possession or boundary by acquiescence. The Branns answered, denied that the road encroached on the Hulett property, and pled the defenses of adverse possession and acquiescence. After a hearing, the circuit court ruled in favor of the Hulett's and denied all claims of adverse

possession and acquiescence. However, the court did not address the Huletts' claim for damages. Consequently, the judgment is not final, and we must dismiss the appeal.

In their complaint, the Huletts requested "such damages as may be assessed following a presentation of evidence at a hearing scheduled on this Complaint." The underlying cause of action was ejectment, and in ejectment actions plaintiffs may seek both possession and damages for lost rents and profits. Ark. Code Ann. § 18-60-209(a) (Repl. 2003). As a general rule, an order is not final and appealable until the issue of damages has been decided. *Delancey v. Qualls*, 2012 Ark. App. 328. Whether an order is final and appealable is a jurisdictional question that the appellate court must raise sua sponte. *Ford Motor Co. v. Washington*, 2012 Ark. 325. If a suit has more than one claim for relief, an order adjudicating fewer than all claims is not final. Ark. R. Civ. P. 54(b)(2). Because the Huletts' complaint included a claim for damages that was never addressed by the circuit court, the judgment now being challenged is not final. See *Wright v. Viele*, 2012 Ark. App. 459. Therefore, we lack jurisdiction and dismiss the appeal.¹

Dismissed.

HOOFFMAN and BROWN, JJ., agree.

Mixon Law Firm, by: *Donn Mixon*, for appellants.
Timothy F. Watson, Sr., for appellees.

¹Although we dismiss the appeal without prejudice, we note that appellants' brief is deficient. The record contains numerous maps, pictures, and plats that were admitted at trial but omitted from the addendum. If appellants choose to file another appeal, they should include those items in the addendum. See Ark. Sup. Ct. Rule 4-2(8)(A)(i) (stating that the addendum must include "any . . . document in the record that is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal . . . [including] exhibits such as maps, plats, and photographs").