

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA11-1238

GUY NEAL WILKINSON

APPELLANT

V.

PAMELA H. SMITH

APPELLEE

Opinion Delivered October 31, 2012

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. CV-2009-867-III]

HONORABLE LYNN WILLIAMS,
JUDGE

APPEAL DISMISSED

JOHN MAUZY PITTMAN, Judge

The appellant, Guy Wilkinson, filed a complaint asserting, *inter alia*, that while he and appellee, Pamela Smith, had been engaged to be married, appellant gave appellee an engagement ring and a one-half interest in a condominium located in Garland County, Arkansas. The complaint further stated that the engagement had been terminated, and appellant prayed for an order of replevin requiring appellee to return the engagement ring; an order of partition ordering that the condominium be sold, with all proceeds of the sale to be awarded to appellant; and an award of damages for unjust enrichment arising out of appellee's use of the condominium. Appellee filed a counterclaim seeking damages for the tort of outrage. The trial court entered an order denying appellant's claim for replevin and granting appellee's claim for damages arising from the tort of outrage. The order further provided that the findings of fact and conclusions of law submitted by appellee were adopted by the court "to the extent that" those findings supported the findings made by the court.



Appellee’s proposed findings were attached to the order as “Exhibit A.” This appeal followed. We dismiss the appeal for lack of a final order because the judgment does not clearly dispose of appellant’s claims regarding the condominium.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure–Civil provides that an appeal may be taken only from a final judgment or decree entered by the trial court. Although the parties did not raise the issue, the question of a final order is a jurisdictional requirement that the appellate court raises on its own in order to avoid piecemeal litigation. *Central Production Credit Association v. Pearson*, 26 Ark. App. 277, 764 S.W.2d 468 (1989). Rule 54(b) of the Arkansas Rules of Civil Procedure deals with the finality of orders in connection with judgments upon multiple claims and provides that, when more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express direction for the entry of judgment accompanied by a written certification, supported by specific factual findings, that there is no just reason for delay. Absent such certification, any judgment or order that adjudicates fewer than all the claims will not terminate the action as to any of the claims because it is subject to revision at any time. Ark. R. Civ. P. 54(b)(2).

In a letter opinion written prior to entry of the order appealed from, the trial judge informed the attorneys that it adopted appellee’s findings of fact and conclusions of law and “dismisses the [appellant’s] remaining counts.” The order appealed from, however, did not



expressly dismiss appellant's remaining counts. The fourteen-page "Exhibit A" containing the adopted findings of fact and conclusions of law listed the following as a finding of fact:

Immediately before starting the trial, [appellant's] counsel announced [appellant's] dismissal with prejudice of his claim for partition of the condominium and dismissal without prejudice [of] his claim associated with an alleged deficiency arising from the foreclosure sale of the condominium.

At [the] close of [appellant's] case in chief, the Court granted [appellee's] motion for directed verdict on [appellant's] claim for unjust enrichment arising from [appellant's] claim for rental income.

There is a difference between a *finding* that a *lawyer announced* that certain claims were dismissed and an *order* that incorporates such finding. Furthermore, an oral pronouncement by a trial judge purporting to adjudicate a claim is not a final order from which an appeal will lie until it is reduced to writing and filed. *National Home Centers, Inc. v. Coleman*, 370 Ark. 119, 257 S.W.3d 862 (2007). Finally, a purported dismissal of claims in a letter opinion that is not incorporated into the judgment is ineffective. The decisions, opinions, and findings of a court—including those expressed in a letter opinion—do not constitute a judgment or decree; they merely form the bases upon which the judgment or decree is subsequently to be rendered and are not conclusive unless incorporated in a judgment. *Thomas v. McElroy*, 243 Ark. 465, 420 S.W.2d 530 (1967); *Moses v. Daurtartas*, 53 Ark. App. 242, 922 S.W.2d 345 (1996); *cf. T&S Machine Shop, Inc. v. KD Sales*, 2009 Ark. App. 836, 372 S.W.3d 410. To give effect to an unincorporated letter opinion would violate the requirement that a judgment or decree must be set out in a separate document in order to be effective. Ark. R. Civ. P. 58. Whatever the court's intention may have been, the order appealed from contains no unambiguous dismissal of the claims relating to the condominium, and no Rule 54(b)



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certification that there is no just reason for delay. Under these circumstances, we hold that the order appealed from is not final and, because our jurisdiction is therefore lacking, we dismiss the appeal.

Appeal dismissed.

ABRAMSON and MARTIN, JJ., agree.

Andi Davis, for appellant.

Bridges, Young, Mathews & Drake, PLC, by: *Tanya B. Spavins*, for appellee.