

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA12-495

TAMMY McCALL MYERS  
APPELLANT

V.

STEVEN CARTER McCALL  
APPELLEE

Opinion Delivered November 28, 2012

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT,  
GREENWOOD DISTRICT  
[NO. DR-1997-442-G]

HONORABLE JIM D. SPEARS,  
JUDGE

APPEAL DISMISSED

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JOHN MAUZY PITTMAN, Judge

This is the second time that this case has been before this court. We dismissed the first appeal because the order appealed from was not final, noting that an appeal may be taken only from a final judgment or decree of a court disposing of all the claims in a lawsuit unless the trial court certifies pursuant to Ark. R. Civ. P. 54(b) that there is no just reason for delay; that two claims remained to be adjudicated; and that the trial court had not issued a Rule 54(b) certificate. *Myers v. McCall*, 2011 Ark. App. 404. In that opinion, this court expressly determined that the trial court had failed to rule on appellant's motion of December 4, 2008, asking the court to abate her child-support obligation, and also failed to rule on appellant's motion of November 20, 2009, seeking reduction of appellant's child-support obligation and a decision regarding the parties' responsibility for the deposition fee owed to the dentist of one of their daughters. *Id.*

After we dismissed the first appeal, appellant sought to obtain a final and appealable order in the trial court, obtained a second order, and has again appealed. We again dismiss for lack of a final, appealable order.

Following issuance of our mandate, appellant's counsel requested a hearing on the outstanding issues and issuance of a final order. Upon reviewing his previous order, the trial judge stated in a letter to counsel, "I don't know of an issue that has not been ruled on," and reissued the previous order with the following addition:

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment, the Court finds:

- a. The Court is not aware of any issue that has not been ruled upon.
- b. The Court designates this Order as a final Order pursuant to Rule 54(b).

Upon review of the record and arguments of counsel, it appears that the trial court believed that it had disposed of the issues mentioned in our prior opinion by oral rulings and by letter opinions. If that is the case, the trial court is mistaken. A ruling is not the equivalent of a written order for the purpose of determining finality on appeal; neither are letter opinions that have not been incorporated into the judgment. *Wilkinson v. Smith*, 2012 Ark. App. 604. The decisions, opinions, and findings of a court—including those expressed in a letter opinion—do not constitute a judgment or decree, but are merely the bases upon which the judgment or decree is subsequently to be rendered and are not conclusive unless incorporated in a judgment. *Id.*

Consequently, the trial court's finding in its Rule 54(b) certificate that all issues have been ruled on does not provide a satisfactory determination, supported by specific factual findings, that there is no just reason for delay in the entry of a final judgment, and the Rule 54(b) certificate is therefore ineffective. Although the trial court may not be aware of any issue that has not been ruled on, the issues that were mentioned in our prior opinion have yet to be reduced to judgment. Because of these outstanding issues, we must again dismiss the appeal for lack of a final order. We note that, if appellant is for any reason unable to obtain a final order on the outstanding issues, her remedy is to seek a writ of mandamus from the Arkansas Supreme Court. *See, e.g., State v. Vittitow*, 358 Ark. 98, 186 S.W.3d 237 (2004).

Appeal dismissed.

WYNNE and HOOFFMAN, JJ., agree.

*Verkamp & Ladd, P.A.*, by: *John P. Verkamp*, for appellant.

*Kevin L. Hickey*, for appellee.