

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CA11-974

MICHAEL GARTMAN and KEMAL  
KUTAIT, Individually and as Administrator  
of the Estate of Rebecca Kutait, deceased  
APPELLANTS

V.

FORD MOTOR COMPANY and  
CRAIN FORD LINCOLN MERCURY  
APPELLEES

Opinion Delivered December 12, 2012

APPEAL FROM THE HOT SPRING  
COUNTY CIRCUIT COURT  
[NO. CV-07-24-1]

HONORABLE CHRIS E WILLIAMS,  
JUDGE

APPEAL DISMISSED WITHOUT  
PREJUDICE

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## JOHN MAUZY PITTMAN, Judge

Appellant Michael Gartman sustained injuries when the Ford truck he was driving left the highway, crashed, and caught fire. Gartman's passenger, Rebecca Kutait, did not survive the accident. In 2007, Gartman and appellant Kemal Kutait, Rebecca's father, sued the truck's manufacturer, appellee Ford Motor Company (Ford), and the truck's seller, appellee Crain Ford Lincoln Mercury (Crain), asserting theories of strict liability, negligence, breach of warranty, fraudulent misrepresentation, and violation of the Arkansas Deceptive Trade Practices Act (ADTPA). Appellants claimed that their damages were caused by the post-crash fire, which stemmed from the truck's defectively designed fuel system. Following a trial, the jury found no fault on the part of Ford that proximately caused appellants' damages. Appellants now appeal from the judgment that memorialized that verdict. We dismiss the appeal due to lack of a final order.



The record before us does not contain written orders resolving all of the claims in the case. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the circuit 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 determination, supported by specific factual findings, that there is no just reason for delay and upon an express direction for entry of judgment. Ark. R. Civ. P. 54(b)(1). In the event the court so finds, it must execute a Rule 54(b) certificate, which shall appear immediately after the court's signature on the judgment, setting forth the factual findings upon which the determination to enter the final judgment is based. *Id.* In the absence of a certificate, any order or judgment that adjudicates fewer than all of the claims or the rights and liabilities of fewer than all of the parties shall not terminate the action as to any of the claims or parties. Ark. R. Civ. P. 54(b)(2). Our jurisdiction on appeal is dependent on the presence of a final judgment or a judgment containing a properly executed Rule 54(b) certificate. *Ford Motor Co. v. Washington*, 2012 Ark. 325.

Here, the judgment from which the appeal is taken adjudicated appellants' claims against Ford for strict liability and negligence. Additionally, the circuit court entered pretrial orders dismissing some of appellants' other causes of action. The breach-of-warranty claim was dismissed in its entirety, as were all of Gartman's claims against Crain, and Kutait's claims against Crain for negligence, fraudulent misrepresentation, and violation of the ADTPA. Neither the judgment nor the pretrial orders, however, resolved appellants' claims against Ford for fraudulent misrepresentation and violation of the ADTPA, or appellant Kutait's claim



against Crain for strict liability. These claims therefore remain pending, and we have no final order. *Hambay v. Williams*, 335 Ark. 352, 980 S.W.2d 263 (1998); *Spill Responders, Inc. v. Felts*, 2009 Ark. App. 669.<sup>1</sup> As well, Ford filed counterclaims against appellants, and no written order appears of record dismissing the counterclaims. See *Spears v. Spears*, 2012 Ark. App. 181; *Lamco Limited Partnership II v. Pasta Concepts, Inc.*, 2012 Ark. App. 145.

Because we lack a final order or a properly executed Rule 54(b) certificate, we are without jurisdiction to hear the merits of this appeal and must dismiss without prejudice. *Mason v. Mason*, 2012 Ark. App. 393.

In the event appellants decide to refile their appeal, we direct them to Arkansas Supreme Court Rule 4-2, which governs the content of appellate briefs. Appellants should particularly note that the addendum must contain documents, such as pleadings and orders of dismissal, essential for this court to confirm its jurisdiction on appeal. Ark. Sup. Ct. R. 4-2(a)(8)(A)(i) (2012); *Ryburn v. Ryburn*, 2012 Ark. App. 435. It also must contain orders material to the issues on appeal such as, in the present case, an order ruling on appellants' motion in limine. Further, depositions that are filed as exhibits to motions or related papers should be abstracted rather than placed in the addendum. Ark. Sup. Ct. R. 4-2(a)(5)(A), (a)(8)(A)(i) (2012).

Dismissed without prejudice.

WYNNE and BROWN, JJ., agree.

*Johnson, LLP*, by: *Gerald M. "Tracy" Johnson, III* for appellant Kemal Kutait.

*John Cole*, local counsel for appellants.

*Lakinchapman, LLC*, by: *Bradley M. Lakin* and *Gail G. Renshaw*, for appellant Michael Gartman.

*Wright, Lindsey & Jennings, LLP*, by: *Edwin L. Lowther, Jr.*, and *Gary D. Marts, Jr.*, for appellees.

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<sup>1</sup>Appellants' notice of appeal did not contain a statement that they abandoned any pending but unresolved claims. Ark. R. App. P.-Civ. 3(e)(vi).