

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA12-673

CAROLYN NIER

APPELLANT

V.

FRED CASE and LISA HEARN

APPELLEES

OPINION DELIVERED MARCH 6, 2013

APPEAL FROM THE WHITE
COUNTY CIRCUIT COURT,
[NO. CV2011-590-1]

HONORABLE TOM HUGHES,
JUDGE

DISMISSED

ROBERT J. GLADWIN, Chief Judge

Appellant Carolyn Nier was granted judgment on April 18, 2012, in White County Circuit Court after a hearing on her complaint for quiet title, trespassing, and unjust enrichment. On appeal, she seeks reversal of the trial court's denial of attorney's fees. We dismiss for lack of a final order.

Appellee Fred Case and Nier are brother and sister, and they inherited certain real property from their mother's estate after they entered into a Family Settlement Agreement (FSA). Fiduciary deeds were transferred and the parties began living and working on their adjoining properties in accordance with the description in those deeds. However, when a dispute arose regarding the location of a boundary line, Nier filed suit against Case and appellee Lisa Hearn, Case's daughter, claiming that the FSA was a basis of the action, and seeking quiet title and enforcement of the property described in the fiduciary deed, which she had received pursuant to the FSA. She made a claim against Case alleging that his cattle



trespassed on and damaged her property. Finally, under a claim for unjust enrichment, she sought reimbursement for half the cost of a survey, which was addressed under section 1, paragraph 3 of the FSA.

Case and Hearn counterclaimed against Nier alleging that, under the FSA, Case was to have use of the road to the barn, chicken house, and river. However, Nier informed him that he could no longer use the road for commercial purposes. Thus, in order to continue to haul shale, he was forced to build a new road, costing him \$3500. He sought judgment for that amount due to Nier's alleged breach of the FSA. He also sought a ruling that Nier should cease utilizing seventy feet of driveway belonging to appellee Hearn, for hauling hay and other commercial uses.

At the hearing, the trial judge acknowledged as follows:

I think that we have a specific statute on quieting title. I have before me three parties. I can make a determination as to whether any of them have any right in this property, but to ask me to quiet title would ask me to find that there is no one else in the world that has any interest in this property, and we have got a statute that provides the procedure for that, so I doubt very much that I will be able to quiet title as the term is used.

Nier's counsel stated, "Well, between the parties," and the trial judge agreed. Later, counsel for Case and Hearn stated that the lawyers had agreed to "forget" about Nier's claim for damages regarding the alleged trespass.

In the April 18, 2012 judgment, the trial court found as follows:

10. The Fiduciary Deeds referred to herein conveyed title to Fred Case and Carolyn Nier was [sic] in conformity with the [FSA], the Agreed Order Authorizing Final Distribution and the Amended Agreed Order Authorizing Final Distribution.



11. The Court finds that the Fiduciary Deed descriptions are correct, Deeds valid[,] and title to the real property owned by Nadine Case Shireman at the time of her death was conveyed to the grantees by the Fiduciary Deeds.
12. The Warranty Deed from Fred L. Case and Winifred J. Case to Lisa Hearn contains real property that is included with the description of the real property conveyed to Fred Case in the Fiduciary Deed dated September 8, 2006, and recorded for record on September 8, 2006. It does not convey any of the real property conveyed to Carolyn Nier by the Fiduciary Deeds referred to herein.
13. The survey obtained by Plaintiff [Nier] from Parish Development Company, LLC did not describe any of the Defendant's [Case's] land. It was not performed in accordance with the terms of the [FSA]. Plaintiff [Nier] is not entitled to payment by Defendant [Case] for the costs of this survey.
14. Fred Case and his family, pursuant to the [FSA], have the right to unlimited personal use of the road to the barn, chicken houses and road to the river.
15. Monetary damages have not been established by the parties. No judgment for damages is awarded.
16. Each party shall pay their own attorney's fee.

Citing Arkansas Rule of Civil Procedure 60, Nier filed a motion to reconsider on May 18, 2012, arguing that she was entitled to attorney's fees under the FSA and Arkansas Code Annotated section 16-22-308 (Repl. 1999). She sought attorney's fees and costs of \$7,957.53 in the related probate matter regarding her mother's estate and \$13,704.87 in the instant matter. No ruling was obtained on this motion. Nier filed a timely notice of appeal, and this appeal followed.

We dismiss this appeal for lack of a final order. The judgment does not mention the counterclaim that seeks declaration that Nier not use Hearn's driveway for seventy feet. The judgment does not specifically rule on Case and Hearn's counterclaim for \$3500; however,



it could be argued that the judgment applies to the counterclaim because it states that neither side proved damages.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil (2012) 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. *Cen. Prod. Credit Assoc. v. Pearson*, 26 Ark. App. 277, 764 S.W.2d 468 (1989). Rule 54(b) of the Arkansas Rules of Civil Procedure addresses 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). The notice of appeal does not contain the statement that the appealing party abandons any pending but unresolved claims, and there is no Rule 54(b) certificate. Ark. R. App. P.—Civ. 3(e)(vi). Accordingly, we dismiss for lack of a final order.

Dismissed.

WYNNE and HIXSON, JJ., agree.

Walker Law Firm, PLLC, by: *Kent Walker*, for appellant.

Brett D. Watson, Attorney at Law, PLLC, by: *Brett D. Watson*, for appellees.