

ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-13-13

BILL HOEK

APPELLANT

V.

VAL ENVIRONMENTAL SYSTEMS

APPELLEE

Opinion Delivered May 29, 2013

APPEAL FROM THE POLK
COUNTY CIRCUIT COURT
[NO. CV-11-87]

HONORABLE TED CAPEHEART,
JUDGE

DISMISSED WITHOUT PREJUDICE

WAYMOND M. BROWN, Judge

Appellant Bill Hoek appeals from an order dismissing his complaint against Val Environmental Systems (VES) with prejudice. Because the order did not dispose of Hoek's claims against a separate defendant, Mike James d/b/a Southern Poultry, Inc., we must dismiss the appeal for lack of a final order.

Hoek entered into a \$160,205.59 contract with separate defendant Mike James on May 1, 2004, for the purchase and installation of poultry-house equipment. A majority of the equipment was supplied by separate defendant VES. The equipment subsequently malfunctioned between July and August 2004. After Hoek unsuccessfully made repair and/or replacement demands upon the defendants, he filed a complaint against the defendants on September 1, 2006. In the complaint, Hoek alleged that the defendants had breached express warranties, as well as the implied warranties of merchantability and fitness for a particular



purpose. Hoek's complaint was dismissed without prejudice on February 16, 2011, due to his failure to comply with the court's pre-trial order and order for mediation. Hoek filed an amended complaint against the defendants on March 28, 2011, alleging the same breaches as the original complaint. Summonses were issued to the defendants that same day. On July 27, 2011, an order was entered granting Hoek's oral motion to extend time for service of process. VES filed an answer and motion to dismiss on August 16, 2011. In the motion to dismiss, VES alleged that it was served with the amended complaint on August 4, 2011; that the summons was not served on it nor was a motion filed before the expiration of the statutory 120 days; and that since this was the second dismissal, it should be with prejudice. The court filed an order dismissing Hoek's complaint against separate defendant VES with prejudice on October 1, 2012. This timely appeal followed.

The finality problem arises because, based upon the record before us, Hoek's claim against Mike James has not been adjudicated, non-suited, or otherwise resolved by the circuit court. Under Ark. R. Civ. P. 54(b), an order that fails to adjudicate all of the claims as to all of the parties is not final for purposes of appeal. Although the circuit court may direct entry of a final judgment as to fewer than all of the parties by executing a Rule 54(b) certificate, that was not done here. In the absence of a final order, we must dismiss the appeal for lack of jurisdiction.¹

Dismissed without prejudice.
GLADWIN, C.J., and HIXSON, J., agree.

Orvin W. Foster, for appellant.
Patrick McDaniel, for appellee.

¹See *Hodges v. Huckabee*, 333 Ark. 247, 968 S.W.2d 619 (1998).