

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-13-148

ANDREW MANCABELLI and ALMA
MANCABELLI

APPELLANTS

V.

ANDRE GIES and MARCI GIES
APPELLEES

Opinion Delivered November 20, 2013

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. CIV 2012-315-4]

HONORABLE GEORGE
CHADDWICK MASON, JUDGE

APPEAL DISMISSED

BILL H. WALMSLEY, Judge

Appellants Andrew and Alma Mancabelli appeal from three orders of the Washington County Circuit Court: (1) an order granting summary judgment to appellees Andre and Marci Gies; (2) an order denying appellants' motion to set aside summary judgment and dismissing their counterclaim; and (3) an order quieting title in the disputed property in appellees. We dismiss the appeal for lack of a final order.

Appellees filed a petition to quiet title against their neighbors, appellants, on February 7, 2012. Subsequently, appellees filed a motion for summary judgment against appellants. On July 13, 2012, the trial court granted the motion for summary judgment. The court granted appellees ten days to amend the pleadings to include any additional necessary parties to the quiet-title action.

On July 23, 2012, appellants filed a counterclaim against appellees and a third-party complaint to quiet title against Linda Graham, individually and as trustee of the Taletta

Merritt Revocable Living Trust u/t/d August 1, 2001; Raymond L. Merritt; and Taletta Merritt, and if deceased, the unknown heirs of Taletta Merritt (deceased). Appellees filed an amended petition to quiet title against appellants and Raymond and Rhonda Merritt. Appellees filed a motion to dismiss the counterclaim on August 9, 2012.

On August 15, 2012, Raymond L. Merritt filed a motion to dismiss the third-party claim against him. On September 28, 2012, the trial court entered an order dismissing without prejudice appellees' complaint against Raymond L. Merritt. On October 19, 2012, appellants filed an amended counterclaim to quiet title against appellees. Appellants then filed a motion to set aside summary judgment. On October 25, 2012, appellants moved to dismiss the third-party defendants. The trial court entered an order on October 30, 2012, dismissing without prejudice Linda Graham, individually and as trustee of the Taletta Merritt Revocable Living Trust, and Raymond Merritt.

On November 5, 2012, the court entered an order denying the motion to set aside summary judgment and dismissing the amended counterclaim. On November 27, 2012, appellants filed a notice of appeal from the court's November 5 order. On December 26, 2012, the trial court entered a decree quieting title in the disputed property in appellees. On January 22, 2012, appellants filed an amended notice of appeal stating that they were appealing from the orders entered on July 23, November 5, and December 26.

Although neither party raises the issue, the question of whether an order is final and subject to appeal is a jurisdictional question, which this court will raise sua sponte. *J-McDaniel Constr. Co. v. Dale E. Peters Plumbing Ltd.*, 2013 Ark. 177. 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. Under Arkansas Rule of Civil Procedure 54(b), an order that fails to adjudicate all the claims as to all the parties, whether presented as claims, counterclaims, cross-claims, or third-party claims, is not final for purposes of appeal.

Our review of the record reveals claims that have not been disposed of by the trial court. The record contains no order dismissing appellees' amended petition to quiet title against Rhonda Merritt. Additionally, appellants' third-party complaint against Taletta Merritt has not been resolved.

Arkansas Rule of Civil Procedure 54(b)(5) states that any claim against a named but unserved defendant is dismissed by the circuit court's final judgment or decree; however, this rule does not resolve the issue where the record fails to demonstrate whether a defendant was served. *Hotfoot Logistics, LLC v. Shipping Point Mktg., Inc.*, 2012 Ark. 76. Here, the record does not reveal whether Rhonda Merritt and Taletta Merritt were served. Although Rule 54(b) provides a method by which the circuit court may direct entry of final judgment as to fewer than all the claims or parties, where there is no attempt to comply with Rule 54(b), the order is not final, and we must dismiss the appeal. *Harrill & Sutter, PLLC v. Farrar*, 2011 Ark. 181.

Appeal dismissed.

GLADWIN, C.J., and GRUBER, J., agree.

Karen Pope Greenway, for appellants.

Cullen & Co., PLLC, by: *Tim J. Cullen*, for appellees.