

ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-13-577

TRUSTEES OF THE PRUITT FAMILY
TRUST

APPELLANT

V.

ANITA E. GLADDEN and ALLEN H.
GLADDEN, husband and wife and as co-
trustees of the ANITA E. GLADDEN
TRUST; MARK MCCLURE and KIM
MCCLURE, husband and wife; and
GARLAND COUNTY

APPELLEES

Opinion Delivered February 12, 2014

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. CV2010-1187]

HONORABLE VICKI SHAW COOK,
JUDGE

DISMISSED WITHOUT PREJUDICE

BILL H. WALMSLEY, Judge

Appellant, Trustees of the Pruitt Family Trust, appeals from the circuit court's order dismissing its complaint to set aside a county court order. We dismiss for lack of a final order.

On September 28, 2010, appellant filed a complaint for declaratory judgment seeking to set aside a county court order vacating a street against Anita E. Gladden and Allen H. Gladden, husband and wife and as co-trustees of the Anita E. Gladden Trust; Mark McClure and Kim McClure, husband and wife; and Garland County Judge Larry Williams. The complaint alleged that on January 27, 2010, the Gladdens filed in the county court of Garland County a petition to vacate a street. Notice of hearing on the petition was published on February 12 and February 19, 2010, and the county court entered an order vacating the street on February 23, 2010. Appellant alleged that it owned property abutting the subject roadway

but did not have an opportunity to be heard in the matter. Appellant claimed that the petition did not follow the statutory-notice provisions governing county roads or streets and falsely alleged that the public had not used or benefited from the roadway for the last five years; thus, appellant claimed that the county court lacked jurisdiction to vacate the street.

Appellant requested a declaratory judgment finding that the Garland County Court lacked jurisdiction to hear the petition and that the order vacating the street was void ab initio. Appellant also asked the court to find that the Gladdens and the McClures, who had subsequently purchased the Gladdens' property, had no rights in the vacated street property and to order the removal of a gate and a fence blocking the roadway.

The Gladdens answered, and the McClures filed an answer and a cross-claim against the Gladdens. The McClures sought reformation of their deed from the Gladdens, alleging that it provided an erroneous legal description of the property. Alternatively, if the order vacating the street was set aside, the McClures sought to have their purchase rescinded. Garland County Judge Larry Williams filed a motion to dismiss, alleging that appellant had failed to state a claim against him. The circuit court denied the motion to dismiss but ordered that appellant amend the style of the caption to name "Garland County" as the party.

The Gladdens subsequently filed a motion to dismiss or, in the alternative, motion for summary judgment. They alleged that the circuit court lacked subject-matter jurisdiction over appellant's complaint because appellant did not timely appeal the county court's order and the complaint was an improper collateral attack of the county court's valid judgment. Garland County Judge Larry Williams moved to adopt the Gladdens' motion.

On February 4, 2013, the circuit court stated in a letter opinion that the Gladdens' motion to dismiss would be granted and directed the Gladdens' attorney to prepare an order of dismissal. In a letter dated February 7, 2013, Judge Williams's attorney asked the court if his previously filed motion to adopt would be granted. The court wrote in response that the motion was granted, that Judge Williams's attorney should submit an order of dismissal, and that the McClures were also dismissed.

On February 26, 2013, the court entered an order dismissing appellant's complaint as to the Gladdens and Garland County. On March 4, 2013, the court entered an order dismissing appellant's complaint against Garland County Judge Larry Williams. On April 3, 2013, appellant filed a notice of appeal appealing "from all orders dismissing Plaintiff's Complaint by granting Defendants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment in favor of Separate Defendant Garland County Judge Larry Williams, including the order entered on March 4, 2013, and all other intermediate orders or judgments in the record." On April 9, 2013, the circuit court entered an order dismissing the McClures "pursuant to this Court's letter ruling dated February 4, 2013." Appellant filed an amended notice of appeal on June 28, 2013.

The McClures have filed a motion to dismiss the appeal, alleging that there was no timely notice of appeal filed as to the order dismissing them from the case and that we have no jurisdiction to hear the appeal. The Gladdens also argue in their brief that there was no timely notice of appeal from the order dismissing them. Appellant contends that there was no final judgment to appeal until after the entry of orders for all the defendants and that by

virtue of Rule 4(a) of the Arkansas Rules of Appellate Procedure—Civil, their original notice of appeal was sufficient. We agree.

Rule 4(a) states in part that

[a] notice of appeal filed after the circuit court announces a decision but before the entry of the judgment, decree, or order shall be treated as filed on the day after the judgment, decree, or order is entered.

The April 3 notice of appeal was filed after the court announced its decision to dismiss all three defendants but before entry of an order to that effect. The order dismissing the last defendants, the McClures, was entered on April 9, 2013. The notice of appeal filed on April 3 is treated as having been filed the day after the April 9 order; therefore, it is timely.

Although a timely notice of appeal was filed in this case, we must dismiss for lack of a final order. The question of whether an order is final and subject to appeal is a jurisdictional question that this court will raise *sua sponte*. *Bulsara v. Watkins*, 2010 Ark. 453. Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil provides that an appeal may be taken from a final judgment or decree entered by the circuit court. Under Rule 54(b) of the Arkansas Rules of Civil Procedure, an order is not final that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties. Rule 54(b) states in relevant part:

(1) Certification of Final Judgment. 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 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 the entry of judgment. . . .

(2) Lack of Certification. Absent the executed certificate required by paragraph (1) of

this subdivision, any judgment, order, or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the judgment, order, or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all of the parties.

The McClures filed a cross-claim against the Gladdens, and there is no order disposing of this action. In the circuit court's February 26, 2013 order, it stated that "the Crossclaim filed by Mark McClure and Kim McClure [is] reserved for further adjudication." There is no Rule 54(b) certificate. An order that fails to address a pending cross-claim is not a final order, and we are without jurisdiction to decide the appeal.¹ *Bulsara, supra*.

Dismissed without prejudice.

PITTMAN and HIXSON, JJ., agree.

Satterfield Law Firm, PLC, by: Guy "Randy" Satterfield, for appellant.

Ralph C. Ohm; Allison Law Firm, P.A., by: William P. Allison; *Cullen & Co., PLLC*, by: Tim J. Cullen; and *Wood, Smith, Schnipper, Clay & Vines*, by: Philip M. Clay, for appellees.

¹Should the parties seek to obtain a Rule 54(b) certificate or to otherwise dispose of the cross-claim, we note that a consultation of Rule 4(f) of the Arkansas Rules of Civil Procedure may lead to further revision, as contemplated by Rule 54(b)(2), before entry of a final order. *See Myers v. Bogner*, 2011 Ark. App. 98, 380 S.W.3d 529.