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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-13-745

STEVEN R. KENDALL, VONDA KENDALL, RANDY LYNN BATES, AND ALMA BATES APPELLANTS V. JOHN GOLDEN AND GLENDA GOLDEN APPELLEES	Opinion Delivered March 12, 2014 APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [NO. 26CV-11-759] HONORABLE LYNN WILLIAMS, JUDGE DISMISSED WITHOUT PREJUDICE

PHILLIP T. WHITEAKER, Judge

Steven and Vonda Kendall and Randy and Alma Bates appeal from a Garland County Circuit Court order purportedly quieting title to certain property in favor of John and Glenda Golden and granting, at least in part, the Goldens' claim for trespass and ejectment. Because the order appealed from fails to adjudicate all the claims of all the parties, we dismiss for lack of a final order.

This case involves a property dispute involving lots all located within the El Dorado Subdivision in Hot Springs, Arkansas. The procedural history is germane to the conclusion of this court and is recited in some detail for that reason.

The Kendalls filed a petition to quiet title in Lots 6, 8, 9, 10, and 11 of Block 12 of the El Dorado Subdivision. The petition named only the described property as defendants without any individual defendants identified. The Goldens, owners of Lots 1–4, subsequently intervened in the quiet-title action and asserted a counterclaim against the Kendalls for trespass and ejectment. They claimed that the Kendalls had incorrectly determined the boundaries of their lots and that the Kendalls' home and fence encroach upon the Goldens' property. The Goldens requested that the fence be removed, that the residence encroaching on their land either be moved or that compensation be paid for the taking of their property, and for damages relating to trespass and encroachment. In response, the Kendalls denied any offense of trespass or encroachment and alleged legal ownership to the property in question. Alternatively, they alleged ownership by adverse possession.

The Goldens moved to join Arklahoma Land Acquisition (the owners of Lots 5 and 7)[1] as necessary parties under Rule 19(a). No objection to the joinder was raised by the Kendalls, but the court never ruled on the motion. Instead, the Kendalls amended their quiet-title action to include ownership in Lots 5 and 7 based on a January 2012 quitclaim deed from Arklahoma to those lots.

The Goldens filed their own action to quiet title in Lots 1–4 of Block 12 and asserted a claim of adverse possession. The Kendalls subsequently filed a second amended petition to quiet title, adding Alma and Randy Bates as plaintiffs to the action and naming Steven Speers as another party (although his position in the lawsuit was listed as unknown).[2] Speers was served with the petition to quiet title, but did not file an answer or otherwise appear.

[1]Arklahoma Land Acquisition is a dissolved corporation with Tony and Dorothy Cox as its only shareholders.

[2]Alma Bates and Steven Speers, along with Vonda Kendall, are co-owners of Lots 6, 10, and 11. They obtained their interest through their mother, Bonnie Speers, on May 23, 2002.

The Kendalls and the Bateses appeal from the findings of fact and conclusions of law entered by the court on June 18, 2013. The trial court found in favor of the Goldens and ordered the Kendalls to move their fence to a location ten feet from their residence—the exact location to be set by the surveyor—and to pay the Goldens $1,500 on their claim of trespass. The Kendalls were also ordered to pay attorneys' fees and costs.

Several deficiencies in the order prevent our review at this time. First, nowhere in the order does the court actually state that it is quieting title in the property (especially in Lots 5 and 7, which are not even listed in the caption); nor does the order provide a sufficient legal description of the lots to which title was quieted. While a metes-and-bounds description is not required, a circuit court's decree must describe the boundary line between disputing land owners with sufficient specificity that it may be identified solely by reference to the decree. *Petrus v. Nature Conservancy*, 330 Ark. 722, 957 S.W.2d 688 (1997). The order here indicates that the Kendalls' fence and residence encroach upon the Goldens' property, yet the order simply orders the Kendalls to move their fence to within ten feet of the residence.[3] While we could presume that the court intended to set the boundary line at the fence line, the court does not specifically do so.

Second, we note that the order contemplates future action—the fence is to be reset according to pins to be set by the surveyor. As such, it is deficient as a final order. *See, e.g.*,

[3]We note that the trial court indicates in its order that it is making findings of facts. However, in many instances, the order simply finds that certain evidence was introduced at trial, rather than translating that evidence into findings of fact. This makes it difficult to determine the court's view of the facts, or the theory of law on which its decision was based.

Petrus, *supra* (finding that a decree in a quiet-title action that contemplates a future survey is not a final order).

Third, we also note that the order does not address the rights and claims of all the parties. The Bateses, who were clearly added as plaintiffs in this action in the second amended petition, are not listed as such in the order; instead, the order designates only the Kendalls as plaintiffs. As a result, it is unclear whether the order, which "quiets title" and awards damages from the "Plaintiffs," applies to the Bateses as well as the Kendalls. Likewise, the order never determines the rights and liabilities of Speers who was added as an undesignated party in the Kendalls' second amended petition to quiet title. The record indicates he was served with the petition; yet his position in the case as either a plaintiff or defendant was never determined,[4] and the order does nothing more than state that a warranty deed named him as co-owner of several of the disputed lots. Finally, the record is unclear as to whether Arklahoma and the Coxes were added as parties to this action. The record does not reflect that the court ever ruled on the joinder motion, or that it determined whether they were parties necessary to the action. Yet, they are listed as defendants on the court's docket sheet. While the court noted in its order that a quitclaim deed from Arklahoma to Steve and Vonda Kendall was introduced at trial, the court did not state that the quit-claim deed was valid or find that title to Lots 5 and 7 should be quieted in favor of the Kendalls as requested.

Finally, the order did not adjudicate all the claims for relief. The order states that a hearing was held on the Kendalls' motion to quiet title and the Goldens' counterclaims for

[4]We note that the docket sheet in the case lists Steven Speers as a Defendant.

trespass and ejectment. The order does not mention the Goldens' petition to quiet title in the property. Additionally, the trial court never actually ruled on either party's claims of adverse possession. Instead, the trial court seemed to set the property boundary by virtue of acquiescence, which, although testified to by the parties, was not pled in any of the petitions. When a lawsuit contains more than one claim for relief, a judgment that adjudicates fewer than all of the claims is neither final nor appealable. *Forever Green Athletic Fields, Inc. v. Lasiter Constr., Inc.*, 2010 Ark. App. 483 (per curiam).

The question of whether an order is final and appealable is jurisdictional, and we are obligated to consider the issue on our own even if the parties do not raise it. *See Advanced Envtl. Recycling Techs., Inc. v. Advanced Control Solutions, Inc.*, 372 Ark. 286, 275 S.W.3d 162 (2008). Pursuant to Arkansas Rule of Appellate Procedure–Civil 2(a)(1), a party may appeal from a final judgment or final decree of the circuit court. Absent a certificate from the circuit court directing that the judgment is final, any judgment, order, or other form of decision, however designated, which adjudicates fewer than all the claims or rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties. Ark. R. Civ. P. 54(b)(2). The requirement that an order must be final and appealable is observed to avoid piecemeal litigation. *Wright v. Viele*, 2012 Ark. App. 459. Because the order in this case does not adjudicate all the claims or rights of all the parties, we dismiss without prejudice for lack of a final order.

HARRISON and WOOD, JJ., agree.

Hurst, Morrissey & Hurst, PLLC, by: *Q. Byrum Hurst, Jr.* and *Justin Hurst*, for appellants.

Ronald D. Kelsay; and
Robert S. Tschiemer, for appellees.