

**ARKANSAS COURT OF APPEALS**

DIVISION IV  
No. CV-13-661

JANE ALLEN HALL

APPELLANT

V.

BOARD OF ADMINISTRATION OF THE WILLOW COVE HORIZONTAL PROPERTY REGIME; and LYNN BENNETT, personally and in his official capacity as both President of the Board of Administration of the Willow Cove Horizontal Property Regime and Manager of the Willow Cove Horizontal Property Regime; PAT WEBB as Board Member, DOUG THACKER as Board Member, JOE THORNTON as Board Member, and GLEN McNEAL as Board Member

APPELLEES

**Opinion Delivered** March 12, 2014

APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT  
[NO. CV-2010-345]

HONORABLE LYNN WILLIAMS,  
JUDGE

DISMISSED WITHOUT PREJUDICE

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**RHONDA K. WOOD, Judge**

For the second time, Jane Allen Hall appeals from the Garland County Circuit Court's order granting a directed verdict to appellees Board of Administration of the Willow Cove Horizontal Property Regime (WCHPR); Lynn Bennett, personally and in his capacity as both the manager of the WCHPR and the president of the Board of

Administration of the WCHPR; and board members Pat Webb, Doug Thacker, Joe Thornton, and Glen McNeal. Our court dismissed her first appeal for lack of a final order. Hall argues that the trial court erred in granting a directed verdict and raises several arguments pertaining to interpretation of bylaws and injunctive relief. This court still lacks jurisdiction to hear the appeal; therefore, we dismiss.

On March 10, 2010, Hall, a resident of WCHPR, filed a petition for temporary and permanent injunction and declaratory judgment against several defendants including the WCHPR Council of Co-Owners (Council). On March 26, 2010, Hall amended her petition, omitting the Council as a defendant and adding the individual board members. Following trial, the court entered an order entitled “Directed Verdict For All Defendants.” Specifically, the circuit court granted a directed verdict “against the Plaintiff on all claims and for all Defendants on all claims”; however, the Council was not among the defendants named in the order. Hall filed a timely notice of appeal and the appeal was dismissed without prejudice on November 28, 2012. The circuit court entered an amended final order on April 1, 2013, which stated that although Hall named the Council as a respondent in the initial petition, “[t]he Council of Co-Owners was dismissed from the action and was not served with the amended petition.” Hall filed a timely notice of appeal from this order.

Whether an order is final and subject to appeal is a jurisdictional question that this court will raise sua sponte. *Delancey v. Qualls*, 2012 Ark. App. 328. 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 Rule 54(b) of the

Arkansas Rules of Civil Procedure, an order is not final that adjudicates fewer than all the claims or rights and liabilities of fewer than all the parties. *S. Farm Bureau Cas. Ins. Co. v. Easter*, 369 Ark. 101, 251 S.W.3d 251 (2007). Our supreme court has held that an order is not a final, appealable order when it does not dispose of the complaints against all of the defendants. *Vimy Ridge Mun, Water Improvement Dist. No. 139 v. Ryles*, 369 Ark. 217, 253 S.W.3d 436 (2007).

A claim against an unserved defendant is dismissed by the trial court's final judgment or decree. Ark. R. Civ. P. 54(b)(5) (2012). In *Trakru v. Mathews*, 2011 Ark. App. 750, this court explained, however, that where a defendant appeared and timely answered a complaint, Rule 54(b)(5) did not apply. In *Trakru*, even though the record did not contain a summons for that particular defendant, the defendant became a party when it appeared; therefore, there was no final and appealable order given that the party was not dismissed.

Although the circuit court's amended order states that the Council was not served and had been dismissed, this does not resolve the concerns mentioned in our previous order that arise under *Trakru*. There is still indication in the record that the Council appeared and thus became a party to the action, making Rule 54(b)(5) inapplicable. The following references in the record indicate that the Council appeared despite not having been served: a member of the Council filed a joint response to Hall's original petition on April 14, 2010; the circuit court listed the Council as a defendant in its order denying Hall's petition for temporary injunction/restraining order and indicated that all the defendants appeared at that hearing; and the Council filed a joint response to Hall's

motion for summary judgment on September 20, 2011. Additionally, at the September 28, 2011 hearing, the court listed the defendants, which included the Council, and their presence was confirmed by defense counsel without correction from appellant.

Because the record indicates that the Council appeared but does not reflect an order dismissing the Council with prejudice, and because the circuit court's order does not include a Rule 54(b) certification, we conclude that there is not a final, appealable order. The amended order still does not dispose of the complaint against all defendants; therefore, we must dismiss.

Dismissed without prejudice.

HARRISON and WHITEAKER, JJ., agree.

*Tona M. DeMers*, for appellant.

*Eudox Patterson*, for appellees.