

# ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-37

DERRICK DAVIDSON

APPELLANT

V.

WHITLEY DUNN

APPELLEE

**Opinion Delivered** January 5, 2011

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[No. CV-07-2521-4]

HONORABLE JOHN R. SCOTT,  
JUDGE

DISMISSED

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## LARRY D. VAUGHT, Chief Judge

Appellant Derrick Davidson appeals from a summary judgment disposing of his cross-claim against appellee Whitley Dunn. We dismiss the appeal due to lack of a final order.

Davidson's cross-claim was part of a larger lawsuit involving a commercial lease between Spiedini Italian Grill and a shopping center in Benton County. After the lease was executed, a nearby property owner sued to enjoin Spiedini's operation, alleging a breach of certain restrictive covenants. About a dozen other parties joined or were brought into the lawsuit through counterclaims, cross-claims, and third-party complaints. Among these was a third-party complaint filed by Spiedini against Davidson, Dunn, and two other employees of Dixie Real Estate, the shopping center's property manager. The abbreviated record in this case does not contain Spiedini's complaint, but we glean from other pleadings that Spiedini sought damages against the four individuals for failing to provide timely notice of the restrictive covenants.

Dunn and two other employees settled with Spiedini. Davidson did not settle and filed a cross-claim against Dunn, asserting that Dunn should have informed him that the restrictive covenants raised a problem with regard to Spiedini's lease. The cross-claim sought judgment over against Dunn should Davidson be held liable to Spiedini. Dunn moved for summary judgment, which the circuit court granted on October 2, 2009. It is from this order that Davidson appeals.

When the circuit court entered its summary-judgment order, several other claims remained pending (including Spiedini's complaint against Davidson). The presence of unresolved claims in a lawsuit ordinarily deprives our court of jurisdiction to hear an appeal, due to lack of finality. *Mullen v. Taylor*, 2010 Ark. App. 398. But, a circuit court may certify an otherwise non-final order for an immediate appeal by executing a certificate pursuant to Ark. R. Civ. P. 54(b)(1) (2010). A Rule 54(b) certificate is intended to permit review before the entire case is concluded only in exceptional situations where a compelling, discernible hardship will be alleviated by an immediate appeal. *See Cruse v. 451 Press, LLC*, 2010 Ark. App. 115; *Rutledge v. Christ Is The Answer Fellowship*, 82 Ark. App. 221, 105 S.W.3d 816 (2003). The certificate must be supported by specific factual findings supporting a determination that there is no just reason to delay the appeal, and the findings must demonstrate that a likelihood of hardship or injustice will occur unless there is an immediate appeal. *Carter v. Simmons First Nat'l Corp.*, 2010 Ark. App. 576.

The court in this case executed the following Rule 54(b) certificate:

With respect to the issues determined by the above judgment, the court finds that numerous claims for relief were presented herein by and against numerous different parties. Many of those claims for relief have been resolved by settlement or by motion.

Some claims remain for trial. The Court has directed the entry of a final judgment herein on all claims of Derrick Davidson against Whitley Dunn. There are no other claims pending against Whitley Dunn. There is no just reason to delay the entry of a final judgment with respect to Derrick Davidson's claims against Whitley Dunn. Upon the basis of the foregoing factual findings, the court hereby certifies, in accordance with Rule 54(b)(1), Ark. R. Civ. P. that it has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the judgment entered herein shall be a final judgment for all purposes.

The certificate does not meet the requirements of Rule 54(b). It does not contain specific factual findings to support the need for an immediate appeal, nor does it demonstrate the existence of an exceptional situation in which a likelihood of hardship or injustice will occur in the absence of an immediate appeal. We must therefore dismiss the appeal without prejudice. *See Po-Boy Land Co. v. Mullins*, 2010 Ark. App. 709.

We also address several defects in appellant's addendum that should be corrected if he decides to refile his appeal at a later date. The addendum contains excerpts from a deposition that was attached to the summary-judgment motion or the response thereto. If a deposition transcript is attached as an exhibit to a motion or related paper, the material parts of the transcript shall be abstracted, not placed in the addendum. Ark. Sup. Ct. R. 4-2(a)(8)(A)(I) (2010). Appellant should therefore abstract the deposition excerpts.

Appellant has also placed two orders in his addendum, including the order appealed from, without the cover pages that show their filemark or date stamp. An order's filing date should, as a matter of course, be shown in the addendum. Particularly with regard to the order appealed from, the addendum must reflect its filing date so that we may confirm the timeliness of the notice of appeal and our jurisdiction on appeal. *Id.* Appellant's addendum should also

include his response and brief in support to appellee's motion for summary judgment. All motions, responses, and related briefs concerning the order challenged on appeal should be part of the addendum. *Id.*

Finally, if appellant refiles an appeal from this summary-judgment order, we urge him to include, in both his record and his addendum, the original complaint filed in the case; a copy of the restrictive covenants; and a copy of Spiedini's third-party complaint. These items will assist our court in fully understanding the nature of his cause of action against appellee.<sup>1</sup>

Dismissed without prejudice.

HART and GLOVER, JJ., agree.

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<sup>1</sup> We also direct appellant, in the event of refileing, to the revised version of Ark. R. App. P.–Civ. 3(e) governing the content of notices of appeal, effective July 1, 2010. *In re Arkansas Rules of the Supreme Court and Court of Appeals; Rules of Appellate Procedure–Civil; and Rules of Civil Procedure*, 2010 Ark. 288 (per curiam).