

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA10-479

BRIAN CARROLL, ELLEN
CARROLL, BRIAN T. CARROLL
LIVING TRUST, PARK PLAZA, LLC,
AND CARROLL RESOURCES, LLC
APPELLANTS

V.

JAY D. BAGGETT

APPELLEE

Opinion Delivered January 26, 2011

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. CV-2009-1290]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

DISMISSED WITHOUT PREJUDICE

DAVID M. GLOVER, Judge

Brian Carroll, Ellen Carroll, Brian T. Carroll Living Trust, Park Plaza, LLC, and Carroll Resources, LLC, appeal from a decision in favor of appellee, Jay Baggett. These parties were involved in three transactions: 1) the purchase of Park Plaza Shopping Center in Fort Smith (Park Plaza LLC); 2) a loan from Carroll Resources, LLC, to Baggett; 3) the sale of “The Tire Guys” from Carroll to a third party named John Oliver, with assistance from Baggett. Disputes associated with these transactions resulted in a lawsuit. Following the trial of this matter, the court entered an order on January 19, 2010, one on February 23, 2010, and one on March 11, 2010.

Each of these three orders contained language establishing their interim nature. For example, the January 19, 2010 order provided: “If after a reasonable period of time the Receiver advises that a one-half interest sale is not forthcoming, the Court would consider the property being sold in its entirety. The Court retains jurisdiction to hear any matters regarding the receivership.” The February 23, 2010 order provided: “As to Plaintiffs’ request that the Court remove the confidentiality/nondisparagement Order and that the Receiver try to sell the LLC as a whole and not as a half, the Court will rule after receipt of Defendant’s response.” The March 11, 2010 order provided:

The Court has ruled on all requests except the confidentiality/non-disparagement order and the selling of Plaintiffs’ one-half interest, if possible, rather than the whole. Defendant has now responded to Plaintiffs’ Motion. . . . Finally, as to the sale of the property, as heretofore stated in the Order of January 19, 2010, reasonable efforts to sell Plaintiffs’ one-half interest should be made. However, if the Receiver advises the Court, after a reasonable period of time that a one-half interest sale is not forthcoming, then the Court would consider selling the property as a whole.

Appellants filed their notice of appeal on March 24, 2010, designating the February 23, 2010 order as the one from which they were appealing. We dismiss the appeal without prejudice because none of the underlying orders are final and appealable. The orders contain language that makes clear that the trial court anticipated the possible need for further proceedings, and there is no Rule 54(b) certification. We therefore dismiss the appeal without prejudice for lack of a final order.

Dismissed without prejudice.

ROBBINS and WYNNE, JJ., agree.