

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-798

DAVID COOMBS and RAZORBACK
LOGISTICS

APPELLANTS

V.

J.B. HUNT TRANSPORT, INC., RICH
ALLENSWORTH, and MARK
EMERSON

APPELLEES

Opinion Delivered MARCH 9, 2011

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. CA-2008-2588-5]

HONORABLE XOLLIE DUNCAN,
JUDGE

DISMISSED

CLIFF HOOFFMAN, Judge

Appellant David Coombs appeals from the trial court's grant of summary judgment to appellees, J.B. Hunt Transport, Inc., Rich Allensworth, and Mark Emerson, on his claims for invasion of privacy, outrage, negligent retention, and constructive discharge. On appeal, Coombs argues that the trial court erred in dismissing all of these claims and in finding that J.B. Hunt would not be vicariously liable for any of the claims. We are unable to address the merits and must dismiss the appeal without prejudice due to the lack of a final, appealable order.

After Coombs left the employ of J.B. Hunt in February 2008, the company filed a complaint in December 2008 against Coombs, both individually and as agent of his company, Razorback Logistics, along with two other previous employees of J.B. Hunt, alleging breach

of their employment contracts and seeking compensatory and injunctive relief. Coombs and Razorback Logistics filed counterclaims against J.B. Hunt, seeking damages for interference with business relationships and for related declarative and injunctive relief. Coombs also filed a counterclaim against J.B. Hunt and third-party complaints against Allensworth and Emerson for invasion of privacy, outrage, negligent retention, and constructive discharge. These claims stemmed from conduct that allegedly occurred on a corporate retreat in May 2007.

Appellees filed a motion for summary judgment on Coombs's tort claims, and a hearing on the motion was held on April 20, 2010. At that hearing, J.B. Hunt stated that it was voluntarily dismissing its complaint against Coombs and Razorback Logistics, and an order of dismissal without prejudice was entered by the trial court on April 20, 2010. There is also an order of dismissal in the record dated April 15, 2010, dismissing the complaint against the two other former employees of J.B. Hunt without prejudice. Subsequent to the dismissal of J.B. Hunt's complaint against him, Coombs stated to the trial court at the hearing that he was voluntarily dismissing his counterclaims against J.B. Hunt for interference with business relationships and for declaratory and injunctive relief regarding the employment contract. The trial court did not state that it was granting Coombs's motion to dismiss his counterclaims at this hearing.

In the summary-judgment order entered on April 23, 2010, the trial court granted summary judgment as to Coombs's counterclaims and third-party claims for invasion of privacy, outrage, negligent retention, and constructive discharge, then stated, "in light of the

Court's prior orders granting voluntary dismissal of the remaining claims by J.B. Hunt Transport against David Coombs, Razorback Logistics, LLC[,] Michael Dorminy and John Castleberry, and voluntary dismissal of the counterclaims of David Coombs and Razorback Logistics against J.B. Hunt Transport on April 20, 2010, there are no remaining issues for trial and this matter should be dismissed from the docket." Other than this statement by the trial court, there is no other order in the record dismissing Coombs's counterclaims against J.B. Hunt. Coombs now appeals from the trial court's grant of summary judgment.

We are unable to address Coombs's arguments on appeal because the trial court's decision granting summary judgment is not final. Absent a certificate from the trial court that directs that the judgment is final and that conforms with the requirements of Ark. R. Civ. P. 54(b), an order or judgment is not considered final if it does not dispose of all of the parties and all of the claims. Ark. R. Civ. P. 54 (2010). The issue of whether an order is final is a jurisdictional matter, and it is one that this court must consider even if the parties do not raise it. *May Constr. Co. v. Town Creek Constr. & Dev.*, 2010 Ark. App. 711.

According to Ark. R. Civ. P. 41(a)(1) (2010), a claim may be dismissed without prejudice at any time before final submission of the case to a jury; however, "it is effective only upon entry of a court order dismissing the action." These provisions also apply to the dismissal of any counterclaim, cross-claim, or third-party claim under Ark. R. Civ. P. 41(c). Our supreme court's decision in *Bevans v. Deutsche Bank Nat'l Trust Co.*, 373 Ark. 105, 281 S.W.3d 740 (2008), is particularly applicable to the facts of this case. In *Bevans*, the trial court

orally granted the appellant's motion to dismiss her counterclaims against appellee. After a trial on appellee's complaint for foreclosure, the trial court entered an order of foreclosure, which noted in a section of the order labeled "Background" that, "On October 25, 2006, Bevans dismissed her counterclaim." *Id.* The order otherwise failed to address the nonsuit motion, and there was no other order entered to this effect. *Id.* The supreme court held that the oral ruling from the bench and the notation in the "Background" section of the order, reciting that appellant had dismissed her counterclaim on a certain date, was not sufficient to reflect the trial court's disposition of the counterclaims. *Id.* Because there was no written order dismissing appellant's counterclaims as required under Rule 41(a), the court held that the foreclosure order was not a final, appealable order and dismissed the appeal. *Id.*

The facts in this case are almost identical. Here, Coombs made an oral motion to nonsuit his counterclaims against J.B. Hunt at the summary-judgment hearing on April 20, 2010, although it was not even orally ruled upon by the trial court at that time. Then, in the summary-judgment order entered on April 23, the trial court noted in the last paragraph that it had previously ordered that J.B. Hunt's complaint be voluntarily dismissed without prejudice and that, in light of the "voluntary dismissal of the counterclaims of David Coombs and Razorback Logistics against J.B. Hunt Transport on April 20, 2010, there are no remaining issues for trial." Because in this case, as in *Bevans, supra*, there is no written order by the trial court dismissing Coombs's counterclaims as required under Rule 41(a), the summary-judgment order is not final, and we must dismiss the appeal without prejudice.

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We also note that, in the event Coombs decides to refile this appeal, there are deficiencies in the addendum that need to be addressed. Pursuant to Ark. Sup. Ct. R. 4-2(a)(8) (2010), the addendum must contain, in addition to the order appealed from, any other relevant pleadings, documents, or exhibits essential to an understanding of the case and to this court's jurisdiction on appeal. Thus, any future addendum should have all orders of dismissal included. It should also include Coombs's initial answer to J.B. Hunt's complaint because his amended answer specifically restates and realleges all allegations in the first answer, and this initial answer is not included in his current addendum.

Dismissed without prejudice.

GLOVER and ABRAMSON, JJ., agree.