

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-967

SOUTHERN FARM BUREAU
CASUALTY INSURANCE CO.

APPELLANT

V.

RICHARD E. WILLIAMS & KATHY
WILLIAMS

APPELLEES

Opinion Delivered March 30, 2011

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT,
CHICKASAWBA DISTRICT
[NO. CV-08-13]

HONORABLE VICTOR LAMONT
HILL, JUDGE

APPEAL DISMISSED

JOSEPHINE LINKER HART, Judge

This case is once more before us. In an opinion handed down on December 9, 2009, we reversed a declaratory judgment in favor of Southern Farm Bureau Insurance Company regarding the interpretation of an insurance policy that it had with Richard E. Williams and Kathy Williams. On remand, the Mississippi County Circuit Court found in favor of the Williamses, finding uninsured motorist coverage for an accident involving the Williamses' daughter, Shante Williams. The Williamses' counterclaim for benefits under their insurance policy has not yet been resolved. On June 29, 2010, the trial court entered a document styled "Rule 54(b) Certificate." Although the certificate attempts to incorporate by reference certain factual findings made in an earlier order, the findings are insufficient to satisfy the

requirements of Rule 54(b) of the Arkansas Rules of Civil Procedure. We therefore must dismiss this appeal without prejudice.

A trial court's Rule 54(b) findings and certifications are reviewable for abuse of discretion, with some deference given to the trial court's decision, since that court is the one most likely to be familiar with the claims and the parties in the case. *Bayird v. Floyd*, 2009 Ark. 455, 344 S.W.3d 80. Because it involves a question of our jurisdiction of the appeal, we are required to review the adequacy of a Rule 54(b) certification sua sponte, if necessary. *Id.* The supreme court has held that strict compliance with Rule 54(b) is a prerequisite to appellate jurisdiction. *Id.* Merely tracking the language of the rule will not suffice; it must be supported by "specific factual findings, that there is no just reason for delay." *Id.*

In the instant case, the trial court's Rule 54(b) certificate is inadequate. The certificate merely tracks the language of the sample certificate found within the rule and attempts to satisfy the requirement for supporting facts by referring to the order that the court had previously entered in which it found in favor of coverage. However, the order is completely silent as to why a delay engendered by an appeal pursuant to Rule 54(b) would not be unjust. Findings must clearly state why it would be just to delay the resolution of the remainder of the case. *Howard v. Dallas Morning News, Inc.*, 324 Ark. 91, 918 S.W.2d 178 (1996).¹ The

¹For an example of suitable findings, in *Howard*, that the supreme court found the following to be adequate:

1) Significant discovery remains to be done. Based on past events, if DMN's dismissal is reversed on appeal, it will doubtless want to re-depose experts whose depositions were taken without its participation. (2) Any subsequent trial against DMN would be protracted and largely duplicative of the first trial. DMN would be entitled to relitigate

absence of equivalent findings in the instant case denies us jurisdiction over this appeal.

Appeal dismissed without prejudice.

ROBBINS and HOOFFMAN, JJ., agree.

virtually all issues raised in the first trial. A protracted retrial of the same issues is highly inefficient and raises an unseemly possibility of divergent verdicts arising from identical facts. The court finds this situation indistinguishable from that in *Franklin v. Osca, Inc.*, 308 Ark. 409, 412, 825 S.W.2d 812 (1992), in which the Supreme Court held an immediate appeal was warranted to avoid a duplicative trial. (3) To deny the motion would not ensure there would be only one appeal, since the parties would likely appeal from both trials. To certify this appeal would avoid the prospect of multiple appeals from possibly divergent verdicts.

324 Ark. at 97, 918 S.W.2d at 181.