

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-478

NORMAN E. BUNDY, JR.
APPELLANT

V.

PAT MOODY
APPELLEE

Opinion Delivered December 8, 2010

APPEAL FROM THE JACKSON
COUNTY CIRCUIT COURT
[No. DR-08-178]

HONORABLE PHILIP SMITH,
JUDGE

REMANDED TO SETTLE THE
RECORD; SUPPLEMENTATION OF
THE ADDENDUM ORDERED

RAYMOND R. ABRAMSON, Judge

Norman Bundy and Pat Moody were divorced by decree entered on June 1, 2009. As the decree recites, Bundy and Moody were equal owners in a cattle operation. But Bundy had sold the cattle before the entry of the decree. Thus, the decree gave Moody a money judgment against Bundy in the amount of \$12,332.14, which was Moody's share of the proceeds from the sale of the cattle. The decree stated that if Bundy paid the judgment within sixty days from May 4, 2009, then no interest would accrue. However, if Bundy failed to pay within that time period, then the judgment was to bear interest at the rate of 5.5% per annum until paid. Bundy did not pay the judgment.

Sometime in fall 2009, Moody filed a petition for contempt against Bundy stemming from his failure to pay. In a December 16, 2009 order, the court found Bundy in contempt

and ordered him to serve 180 days in jail. The court, however, suspended the jail sentence until January 7, 2010—if Bundy paid the judgment before that date, then he would not have to go to jail. The next day, Bundy filed a motion for a new trial. The court entered an order on January 4, 2010, taking Bundy’s motion for a new trial under advisement and staying Bundy’s commitment to jail, which was to occur on January 7, 2010, “pending further consideration and rulings by the Court.”

A couple of weeks later, Moody filed an amended contempt petition and a petition for modification, again pointing to Bundy’s failure to pay the judgment. The court never ruled on Bundy’s motion for a new trial. Thus, on February 12, 2010, Bundy timely filed his notice of appeal from the December 16, 2009 order holding him in contempt and ordering him to jail if he did not pay. On appeal, Bundy makes multiple challenges to the court’s contempt order. We do not reach the merits of Bundy’s appeal, but instead must remand this case to settle the record and for Bundy to supplement his addendum.

Finality

“[T]he question of whether an order is final and subject to appeal is a jurisdictional question which the court will raise *sua sponte*.” *Epting v. Precision Paint & Glass, Inc.*, 353 Ark. 84, 89, 110 S.W.3d 747, 749 (2003). “[T]he test of finality and appealability of an order is whether the order puts the court’s directive into execution, ending the litigation or a separable part of it. However, when the order appealed from reflects that further proceedings are pending, which do not involve merely collateral matters, the order is not final.”

Hernandez v. Hernandez, 371 Ark. 323, 326, 265 S.W.3d 746, 748–49 (2007) (internal citations and quotations omitted).

Here, Bundy filed his motion for a new trial on December 17, 2009. The court entered an order on January 4, 2010, stating that Bundy’s motion for a new trial had been taken under advisement and staying Bundy’s commitment to jail “pending further consideration and rulings by the Court.” The court, however, did not decide Bundy’s motion for a new trial within thirty days of its filing.

Because the circuit court neither granted nor denied Bundy’s motion for a new trial within thirty days, it was deemed denied. Ark. R. App. P.–Civ. 4(b)(1). And the fact that the circuit court took Bundy’s motion under advisement during the thirty-day window made no difference. *Ark. State Highway Comm’n v. Ayres*, 311 Ark. 212, 213–14, 842 S.W.2d 853, 854–55 (1992). Neither does the portion of the order staying Bundy’s jail sentence “pending further consideration and rulings by the Court,” create a finality problem. Again, Bundy’s motion for a new trial was deemed denied after the court failed to rule on it within thirty days of its filing. Thus, once this thirty-day period had passed, there was nothing more for the court to consider or to rule on in regard to Bundy’s motion for a new trial. In sum, we have a final order here.

Settling the Record

Bundy’s addendum was supposed to include, in part, “all motions . . . concerning the order, judgment, or ruling challenged on appeal,” and “any document essential to an

understanding of the case and the issues on appeal.” Ark. Sup. Ct. R. 4-2(a)(8)(A)(i). Here, there is an important document missing from both Bundy’s addendum and the record: Moody’s initial petition for contempt. As our supreme court has held, “it is impossible for us to make an informed decision on the merits of an appeal in the absence of the pleadings and motions on which the trial court based its decision.” *Bryan v. City of Cotter*, 2009 Ark. 172, at 4, 303 S.W.3d 64, 66. The *Bryan* case gives blunt instruction: “an order of a circuit court cannot be reviewed for error when the addendum fails to include the documents on which the order was based.” *Id.* at 4, 303 S.W.3d at 66–67.

We therefore remand this case to the circuit court to settle the record. Ark. R. App. P.–Civ. 6(e); *Heard v. Regions Bank*, 369 Ark. 274, 276–77, 253 S.W.3d 422, 424 (2007). When the record is settled, Bundy then has fifteen days to file a substituted addendum that includes Moody’s initial contempt petition. Ark. Sup. Ct. R. 4-2(b)(3); *Heard, supra*. Moody, if she so chooses, will then have an opportunity to revise or supplement her brief. Ark. Sup. Ct. R. 4-2(b)(3); *Heard, supra*. If Bundy fails to file a complying brief within the time allowed, then we may affirm for noncompliance with the rule. Ark. Sup. Ct. R. 4-2(b)(3); *Heard, supra*.

Remanded to settle the record; supplementation of the addendum ordered.

ROBBINS and KINARD, JJ., agree.