

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 10-270

KEVIN and TAMMY HORTON,
HUSBAND AND WIFE
APPELLANTS

V.

BRENT and ROBIN TAYLOR, husband
and wife, and DUFORD TAYLOR
APPELLEES

Opinion Delivered December 8, 2010

APPEAL FROM THE SEARCY
COUNTY CIRCUIT COURT
[NO. CV-2009-27]

HONORABLE RHONDA K. WOOD,
JUDGE

DISMISSED

WAYMOND M. BROWN, Judge

This is an appeal from a very contentious property dispute. The Hortons challenge an order denying them an easement over the Taylors' property. But this order does not address a counterclaim filed by the Taylors, seeking quiet title to a separate piece of disputed property. Because the record contains no final order, we must dismiss.

In April 2009, the Hortons filed a complaint to establish an easement over the Taylors' property. About two weeks later, they amended their complaint to claim outright ownership of another three acres of disputed property. These three acres are separate from the easement claimed in the original complaint. The Taylors denied the allegations in the Hortons' complaints, and in December 2009, they filed a counterclaim to quiet title to a disputed tract, which included the three acres the Hortons claimed in their amended complaint. The circuit

court held a trial on the easement only, and in an order entered in January 2010, it found that the Hortons failed to prove entitlement to an easement over the Taylors' property. The Hortons filed a motion to vacate the judgment in February 2010, but the record does not reflect a ruling on the motion. A few days later, they filed a notice of appeal to this court.

The Taylors raise the issue of finality in their brief. Generally, parties may only bring an appeal from a final order.¹ Absent a certificate under Arkansas Rule of Civil Procedure 54(b), any order that fails to address a counterclaim is not a final, appealable order.² The order here explicitly states that the counterclaim between the parties is still pending, and there is no other order in the record addressing the counterclaim. Thus, the order appealed from is not a final, appealable order, and we dismiss without prejudice.

Dismissed.

ROBBINS and GRUBER, JJ., agree.

¹ See Ark. R. App. P.—Civ. 2(a)(1).

² *S. Farm Bureau Cas. Ins. Co. v. Easter*, 369 Ark. 101, 251 S.W.3d 251 (2007).