

ARKANSAS COURT OF APPEALS

No. CA09-641

HOLLIS ROBISON AND JEAN
ROBISON

APPELLANTS

V.

EUNICE RAY FOUNTAIN; DORA
ANN FOUNTAIN; THE RAY AND
ANN FOUNTAIN FAMILY LIVING
TRUST

APPELLEES

Opinion Delivered February 11, 2010

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT [NO. CV07-351]

HONORABLE JAMES D. KENNEDY,
JUDGE

APPEAL DISMISSED

PER CURIAM

In this case involving the sale of 180 acres in Pope County, we must dismiss for lack of a final order.

Appellants purchased the property from appellees, Ray and Ann Fountain, Trustees of the Ray and Ann Fountain Family Living Trust, in 2006. In 2007, appellants sued appellees for specific performance or damages, claiming that appellees failed to convey the mineral interests to the entire 180 acres. Appellees answered that they did not own the mineral rights to all 180 acres, which appellants knew, and that the offer and acceptance contained ambiguous terms with regard to the mineral rights. Appellees also filed a counterclaim seeking reformation of the deed, asserting that appellants were estopped from pursuing their cause of action, and claiming injury due to appellants' fraud.

Following a bench trial, the circuit court found that the language in the offer and acceptance and the deed was ambiguous and could be interpreted to convey only those mineral rights actually owned by the grantor. The court then ruled in favor of appellees on appellants' complaint but did not rule on appellees' counterclaim.

Rule 54(b)(1) of the Arkansas Rules of Civil Procedure provides that when more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, the circuit court may direct the entry of a final judgment as to one or more but fewer than all of the claims only upon an express determination, supported by specific factual findings, that there is no just reason for delay and upon an express direction for the entry of judgment. Absent a Rule 54(b) certificate containing the proper findings, an order is not final if it adjudicates fewer than all of the claims presented. Ark. R. Civ. P. 54(b)(2); *Sims v. Fletcher*, 368 Ark. 178, 243 S.W.3d 863 (2006). In particular, an order that fails to address a counterclaim is not a final, appealable order. *Sims, supra*.

Because appellees' counterclaim remains unadjudicated and the court's order does not contain a Rule 54(b) certificate, we must dismiss the appeal. We recognize that the counterclaim contains some allegations that are in the nature of defenses rather than claims for relief. However, the counterclaim also asserts injury due to fraud and seeks "relief prayed for in the counterclaim" and "all other relief" to which appellees might be entitled. This constitutes a claim for relief that has not yet been resolved by the circuit court. We therefore dismiss the appeal without prejudice.

Cite as 2010 Ark. App. 146

Appeal dismissed without prejudice.