

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-1144

TOMMY E. THOMPSON and IRENE
THOMPSON

APPELLEES

V.

THE CITY OF BAUXITE, ARKANSAS,
et al.

APPELLEES

Opinion Delivered APRIL 21, 2010

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[NO. CV-2008-769-1]

HONORABLE GEORGE D. ELLIS,
SPECIAL JUDGE

APPEAL DISMISSED

JOSEPHINE LINKER HART, Judge

On December 4, 2007, the Saline County Court issued an order granting a petition to annex certain real property to the City of Bauxite. On July 31, 2008, appellants, Tommy E. Thompson and Irene Thompson, filed a complaint in Saline County Circuit Court alleging that the petition for annexation and the order granting the petition were defective because (1) the petition and order were not based on the signatures of the statutorily required majority of the total number of real-estate owners in the area affected nor based on the majority of the total number of owners who own more than one-half of the acreage affected; (2) there was a failure to comply with statutory notice requirements; (3) the various legal descriptions did not accurately describe the affected property; and (4) the annexation was a “land grab” and done for improper purposes. Appellants asked that the circuit court nullify the county-court order, enjoin the City of Bauxite from enforcing its law and ordinances in the affected area,

and enter an order enjoining further proceedings related to the annexation.

Appellees filed a motion to dismiss. The circuit court entered an order finding that appellants did not bring an action within the thirty-day statutory time frame. The court, however, did find that a collateral attack could be made outside the thirty-day period if the allegations were jurisdictional in nature. The court noted that those allegations included a failure of notice and a failure of the legal description of the property to be annexed. The court denied the motion to dismiss with regard to the allegations that were jurisdictional in nature. The court, however, found that

the allegation[] of [appellants] that the original petition was brought by parties who lacked standing because the petition was based upon less than the requisite number of eligible landowners required to petition for annexation, [and] thus the original petition and the resulting Order of the Saline County Court were void *ab initio*[,] [is] not a jurisdictional allegation [that] would allow for such a collateral attack after the 30-day time limitation.

Accordingly, the court dismissed the allegation. The court's order also contained a Rule 54(b) certificate, which essentially reiterated the above findings, providing as follows:

With respect to the issues determined by the above judgment, the Court finds that [appellants] did not bring any action within the statutory time frame as outlined in Ark. Code Ann. §14-40-604. The Court further finds that the allegation[] that the original petition was brought by parties who lacked standing because the petition was based upon less than the requisite number of eligible landowners required to petition for annexation [is] not a jurisdictional allegation [that] would allow for a collateral attack after the 30-day time limitation as set forth in Ark. Code Ann. § 14-40-604. Therefore such allegation[] in [appellants'] Complaint relating to the lack of standing to petition for annexation based upon an incorrect number of eligible signatures [is] dismissed.

Upon the basis of the foregoing factual findings, the Court hereby certifies in accordance with Rule 54(b)(1), Ark. R. Civ. P., that it has determined that there is

Cite as 2010 Ark. App. 338

no just reason for delay of the entry of final judgment and that [the] Court has and does hereby direct that the judgment shall be a final judgment for all purposes.

Appellants appealed and argue that the circuit court erred in dismissing this allegation.

This court, however, must dismiss the appeal. The Rule 54(b) certification found in the circuit court's order is defective because it does not state any factual reason to support the conclusion that there was no just cause to delay entry of a final judgment even though there remain outstanding claims. Instead, the certification merely explained why the allegation relating to the signatures had been dismissed and did not show that undue hardship would likely result if an interlocutory appeal were not allowed, which is what Rule 54(b) requires. *Cruse v. 451 Press, LLC*, 2010 Ark. App. 115. Accordingly, we dismiss the appeal.

Appeal dismissed.

PITTMAN and BAKER, JJ., agree.