

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-23

CENTURY INDUSTRIES, INC.
APPELLANT

V.

REACH-ASSOCIATES, LLC
APPELLEE

Opinion Delivered MAY 26, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CV2008-5551]

HONORABLE JAY MOODY, JR.,
JUDGE

DISMISSED

WAYMOND M. BROWN, Judge

Century Industries successfully defended a breach-of-contract claim against REACH-Associates, LLC, but the circuit court denied its request for attorney's fees. Century appeals, but the record lacks a final order. Accordingly, we dismiss.

In 1995, REACH sold Century some accounting and business software. Along with the software, REACH was to provide technical support. In May 2008, REACH filed a complaint against Century, alleging that Century owed it more than \$23,000 for training and support services. Century filed a counterclaim, alleging that REACH did not provide promised support and training, resulting in problems using the software. Century sought damages associated with the computer problems. The record contains no pleadings, trial transcripts, or motions filed between the time Century filed its counterclaim and the time the circuit court dismissed

REACH's complaint. But in August 2009, the circuit court dismissed REACH's complaint with prejudice, finding that Century had proved the affirmative defense of set-off. Century then filed a motion for attorney's fees, but that motion was denied. Century then filed a notice of appeal.

As stated in the introduction, we lack jurisdiction to consider this appeal, as the record does not contain a final order. The question of our jurisdiction is one that we must raise on our own motion.¹ Absent certification under Arkansas Rule of Civil Procedure 54(b), an order that fails to adjudicate all claims as to all parties is not final for the purposes of an appeal.² And with exceptions not applicable here, an appeal may only be taken from a final order.³

Here, the record contains a claim that was dismissed with prejudice and a counterclaim that was unaddressed. In its argument, Century states that its counterclaim has been dismissed but contends that it has no bearing here. Without the order dismissing the counterclaim, however, we cannot determine whether this is actually the case. The need for a final order is even more important here, as this court must be able to determine who was the prevailing party. The prevailing party is determined "by who comes out 'on top' at the end of the case."⁴ Without an order addressing the counterclaim, we cannot know which party is "on top." For these reasons, we dismiss this appeal for lack of a final order.

¹ *Le v. Nguyen*, 2009 Ark. App. 642.

² *Id.*

³ Ark. R. App. P.—Civ. 2(a)(1).

⁴ *Marcum v. Wengert*, 344 Ark. 153, 162, 40 S.W.3d 230, 236 (2001).

Cite as 2010 Ark. App. 455

Dismissed.

KINARD and BAKER, JJ., agree.