

ARKANSAS COURT OF APPEALS

No. CA08-1133

FOREVER GREEN ATHLETIC
FIELDS, INC., d/b/a PROGREEN,
KEITH DAY, and DAVID RIPKA and
PROGREEN SPORT SURFACES, LLC
and RAYMOND FRITZ
APPELLANTS/CROSS-APPELLEES

V.

LASITER CONSTRUCTION, INC., and
MICHAEL LASITER
APPELLEES/CROSS-APPELLANTS

Opinion Delivered JUNE 2, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CV2006-4800]

HONORABLE JAMES MOODY, JR.,
JUDGE

APPEAL DISMISSED

PER CURIAM

This case was remanded for rebriefing on December 16, 2009, because the judgment entered upon the jury's verdict and numerous pleadings were missing from the parties' addenda. *See Forever Green Athletic Fields, Inc. v. Lasiter Constr., Inc.*, 2009 Ark. App. 878. There were other defects with the parties' briefs, such as the lack of references in the argument portions of the briefs to materials in the abstracts and addenda. Corrected briefs were filed by the parties in compliance with our per curiam opinion. Nevertheless, we must now dismiss this appeal and cross-appeal for lack of a final, appealable order, which deprives this court of jurisdiction to hear the appeal.

These parties became involved with one another in 2004, when appellant Forever Green Athletic Fields, Inc. (Forever Green), bid on several construction projects in Arkansas

to supply and install ProGreen¹ synthetic grass fields for the Batesville and Rogers School Districts, Pulaski Academy, Shiloh Christian School, and the University of Arkansas (collectively referred to as the Projects). Forever Green was awarded the bid for the Projects but subsequently learned it could not act as the contractor because it did not have a proper contractor's license. Appellee/cross-appellant Lasiter Construction was awarded the bids, and it negotiated with Forever Green to obtain ProGreen materials for use on the Projects.

In 2006, Forever Green filed suit against Lasiter Construction for unpaid materials. Lasiter Construction answered and counterclaimed for cost overruns that it contended Forever Green agreed to be responsible for and for claims it received by assignment from the University of Arkansas for problems it had with its synthetic field. Lasiter Construction also filed a third-party complaint against appellant ProGreen Sport Surfaces, LLC (PSS) and other third-party defendants contending they were jointly and severally responsible for Lasiter Construction's claims against Forever Green. PSS answered and counterclaimed against Lasiter Construction and filed a third-party complaint against Lasiter Construction's president, Michael Lasiter. It asserted various tort claims against Lasiter Construction, including malicious prosecution, abuse of process, tortious interference with contracts or business expectancies, fraud, and violations of the Arkansas Deceptive Trade Practices Act. It also

¹ProGreen is a trademark that multiple parties, including both Forever Green and appellant Progreen Sport Surfaces, LLC (PSS), have the right to use.

sought to pierce the corporate veil so as to hold Michael Lasiter personally liable for those same claims.

Before trial, Lasiter Construction and Michael Lasiter filed separate motions to dismiss PSS's counterclaim and third-party complaint against them pursuant to Arkansas Rule of Civil Procedure 12(b)(6) for failure to state facts upon which relief could be granted. The circuit court held a hearing on August 30, 2007, at the conclusion of which it orally granted Michael Lasiter's motion to dismiss all of the third-party claims filed against him by PSS. It also dismissed PSS's claims against Lasiter Construction for fraud, tortious interference with contracts or business expectancies, and violations of the Arkansas Deceptive Trade Practices Act. Although the court denied the motion as to PSS's malicious prosecution and abuse-of-process claims, those claims were later resolved when the court granted Lasiter Construction's motion for summary judgment on those claims.

By the time of trial, all of PSS's tort claims against Lasiter Construction and Michael Lasiter had been orally disposed of by being dismissed or by a summary judgment. A two-week trial was conducted on the parties' remaining claims. The case was submitted to the jury on interrogatories and resulted in a judgment entered April 25, 2008, that denied all the claims and counterclaims of all the parties and awarded no damages. Motions were filed by the parties for judgment notwithstanding the verdict or, in the alternative, for a new trial. An order entered June 4, 2008, denied all motions for judgment notwithstanding the verdict but granted Lasiter Construction a new trial, in part, on its breach-of-contract claim.

The problem necessitating dismissal of the appeal arises because the orders entered by the circuit court do not dispose of PSS's Arkansas Deceptive Trade Practices Act and tortious interference claims against Lasiter Construction. According to PSS's notice of appeal, two orders were entered on September 6, 2007, disposing of the motions to dismiss its tort claims against Lasiter Construction and Michael Lasiter. The order as to its claims against Michael Lasiter individually is in the record and is included in PSS's addendum. There is, however, no order dismissing PSS's claims against Lasiter Construction for tortious interference with a contract or business expectancy or for violation of the Arkansas Deceptive Trade Practices Act in either the record or the addendum, although PSS raises the dismissal of these claims as one of its points on appeal. The parties may be aware of this omission because, in their briefs, PSS and Lasiter Construction both refer to the circuit court's oral ruling from the bench, but do not cite to a written order dismissing these claims. Pursuant to Arkansas Supreme Court Administrative Order No. 2(b)(2), an oral order announced from the bench does not become effective until reduced to writing and filed with the clerk. *McGhee v. Arkansas Bd. of Collection Agencies*, 368 Ark. 60, 243 S.W.3d 278 (2006). Moreover, Arkansas Rule of Civil Procedure 58 provides that "[a] judgment or order is effective only when so set forth and entered as provided in Administrative Order No. 2."

With inapplicable exceptions, Rule 2 of the Arkansas Rules of Appellate Procedure—Civil allows appeals only from final judgments and orders. Finality is a jurisdictional question that we must address sua sponte. *Brasfield v. Murray*, 96 Ark. App. 207, 239 S.W.3d 551

(2006). If a suit has more than one claim for relief, an order or judgment adjudicating fewer than all claims is neither final nor appealable. Ark. R. Civ. P. 54(b)(2). On the present record, PSS's Arkansas Deceptive Trade Practices Act and tortious- interference claims were never adjudicated; thus the judgment and orders now being challenged are not final. *E.g.*, *Hambay v. Williams*, 335 Ark. 352, 980 S.W.2d 263 (1998); *Brasfield*, 96 Ark. App. at 207–08, 239 S.W.3d at 552–53; *Strack v. Capital Servs. Group*, 87 Ark. App. 202, 189 S.W.3d 484 (2004). We therefore must dismiss the appeal and cross-appeal without prejudice. *State Farm Mut. Auto. Ins. Co. v. Thomas*, 312 Ark. 429, 850 S.W.2d 4 (1993); *Spill Responders, Inc. v. Felts*, 2009 Ark. App. 669.

We note that extensive briefs have now been filed twice in our court. Upon entry of a final order and appeal from that order lodged with this court, we will entertain a motion from the parties to rely on the briefs already filed in this appeal.

Appeal dismissed.