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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-83

WILEY F. JONES and CARLENE JONES, AS TRUSTEES OF THE WILEY F. JONES AND CARLENE JONES LIVING TRUST APPELLANTS	**Opinion Delivered** JUNE 16, 2010 APPEAL FROM THE IZARD COUNTY CIRCUIT COURT [NO. CIV-2004-140-2]
V.	HONORABLE JOHN NORMAN HARKEY, JUDGE
DOTTIE KERBOW BOURASSA APPELLEE	DISMISSED

M. MICHAEL KINARD, Judge

Wiley F. Jones and Carlene Jones, as Trustees of the Wiley F. Jones and Carlene Jones Living Trust, appeal from an order of the circuit court ordering them to pay appellee $29,108.46. Because the order of the trial court is not a final order, the appeal is dismissed.

Wiley F. Jones is the father of appellee. The impetus for this litigation is a home that appellants built for appellee to live in. After the home was built, the parties developed a disagreement regarding whether appellants intended to give appellee the house or whether appellee was supposed to repay the cost of building the house. On November 2, 2004, appellee filed a complaint seeking specific performance in the form of a deed to the home or, in the alternative, repayment of funds she spent for the construction of the home. On June 27, 2006, appellee filed an amendment to the complaint in which she added two counts. In the second count, appellee alleged that appellants promised her the deed to twenty acres

of land and were now refusing to tender the deed. In the third count, appellee alleged that her father failed to pay child support when appellee was a minor. In an order entered December 4, 2007, the trial court dismissed appellee's claim for child support.

On March 24, 2008, the trial court entered a judgment awarding appellee $29,108.46 as reimbursement for funds she spent on the construction of the home and granting a lien against the property. Appellants appealed to this court. Appellee filed a motion to remand and stay briefing schedule. On September 30, 2009, this court denied appellee's motion and dismissed the appeal without prejudice. On October 28, 2009, the trial court entered a nunc pro tunc order stating that count three of appellee's amended complaint as well as her individual claim against Wiley Jones for child support was dismissed with prejudice. Appellants have now appealed from the nunc pro tunc order.

In order to be appealable, an order must be final. *Liberty Life Ins. Co. v. McQueen*, 364 Ark. 367, 219 S.W.3d 172 (2005). To be final and appealable, an order must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Petrus v. Nature Conservancy*, 330 Ark. 722, 957 S.W.2d 688 (1997). The order must be of such a nature as to not only decide the rights of the parties, but to put the court's directive into execution, ending the litigation or some separable part of it. *Budget Tire & Supply Co. v. First Nat'l Bank*, 51 Ark. App. 188, 912 S.W.2d 938 (1995). In her amended complaint, appellee included a claim for specific performance of an alleged promise by appellants to deed to her twenty acres of land. Although appellee testified at the hearing

that she was not pursuing that claim in this litigation, there is no order from the trial court dismissing the claim. The claim is not referenced in the judgment, and the nunc pro tunc order only applies to the claim for child support. If a court's judgment fails to dispose of all of the outstanding claims in the complaint, it is proper to dismiss the appeal without prejudice for lack of finality. *See Hambay v. Williams*, 335 Ark. 352, 980 S.W.2d 263 (1998). Appellee's claim for the twenty acres of land is still outstanding, and the appeal is dismissed.

Dismissed.

BAKER and BROWN, JJ., agree.