

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA09-1275

MICHAEL L. WOMMACK
APPELLANT
V.
SHELLY R. INGRAM
APPELLEE

Opinion Delivered June 23, 2010

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[DR-2003-1888-3]

HONORABLE STACEY A.
ZIMMERMAN, JUDGE

DISMISSED WITHOUT PREJUDICE

DAVID M. GLOVER, Judge

The parties filed cross-actions for contempt of court. Appellee, Shelly Ingram, filed a petition for contempt against appellant, Michael Wommack, contending that he was violating the trial court's order to coordinate visitation between two young girls, who are half-sisters. Michael filed a counterclaim for contempt against Shelly. The two young girls have different fathers, one of whom is Michael. Their mother's name is Jessica. Jessica is not a party to this action, and neither is the father of one of the girls, custody of whom was awarded to Shelly, who is Jessica's sister. Michael was awarded custody of his and Jessica's child.

Following a hearing, the trial court found Michael to be in civil contempt of the court's order; sentenced him to three days in jail, suspended for one year conditioned upon

his compliance with all future orders; and ordered him to pay appellee \$250 in attorney's fees. The trial court modified the visitation order to specify exactly when and under what circumstances the two sisters were to be allowed to visit. The trial court did not rule upon Michael's counterclaim for contempt. Michael filed this appeal, contending that the trial court erred in finding him in contempt because Shelly was not able to demonstrate that he had violated a specific, definite order of the court. We dismiss the appeal without prejudice for lack of an appealable order.¹

Whether a judgment, decree, or order is final is a jurisdictional issue that the appellate court has a duty to raise, even if the parties do not, in order to avoid piecemeal litigation. *Mitchell v. Fells*, 2010 Ark. App. 293. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties 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. Ark. R. Civ. P. 54(b) (2010).

Though the order appealed from in this case clearly stated that Michael was in contempt, we have determined that it left Michael's counterclaim for contempt unresolved;

¹ We recognize that a contempt order that imposes a sanction and constitutes the final disposition of a contempt matter is ordinarily appealable. See *Henry v. Eberhard*, 309 Ark. 336, 832 S.W.2d 467 (1992). Here, however, because the court was faced with cross-actions for contempt that were based upon the same underlying order of the court and the same facts involving the same parties, we do not regard the one contempt order to be final without a decision on the counter petition.

Cite as 2010 Ark. App. 529

likewise, there is no Rule 54(b) certification from the trial court. We therefore dismiss this appeal without prejudice because without a decision on Michael's counterclaim for contempt, we do not have a final, appealable order.

Dismissed without prejudice.

HART and HENRY, JJ., agree.