

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA09-1336

THOMAS CARTER, ET AL.

APPELLANTS

V.

SIMMONS FIRST NATIONAL
CORPORATION, ET AL.

APPELLEES

Opinion Delivered September 8, 2010

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. 2007-1158-5]

HONORABLE JODI DENNIS, JUDGE

APPEAL DISMISSED

LARRY D. VAUGHT, Chief Judge

Appellants Thomas Carter, Tena Carter, and the entities by which they conduct farming operations¹ (collectively, the Carters) bring this appeal from the order granting summary judgment to appellees Simmons First Bank of South Arkansas and Simmons First National Corporation (collectively, Simmons) on the Carters' various tort claims arising from the handling of a crop loan Simmons made to the Carters for the 2000 crop. In response, Simmons argues that we lack jurisdiction to hear this appeal because the order appealed from is not final. We agree and dismiss this appeal without prejudice.

In 2000, Simmons loaned the Carters \$375,700 for their 2000 crop production. The loan was secured by a mortgage with the power of sale. Upon maturity of the loan in January

¹TPRA, Inc.; Carter Duck Farm, LLC; and Thomas & Tena Carter Family Partnership.

2001, approximately \$140,000 remained unpaid. Thereafter, Simmons filed a foreclosure action on May 25, 2001. This suit was voluntarily nonsuited to allow the Carters to resolve their loan deficiencies. On September 24, 2001, Simmons refiled its foreclosure suit. A settlement was ultimately reached in 2002 with the Carters paying the debt and the foreclosure proceedings being dismissed.

On October 1, 2003, the Carters filed the present action relative to Simmons' servicing and administration of the 2000 crop loan.² The complaint asserted claims for abuse of process and malicious prosecution; civil-rights violations; libel; interference with contracts and business expectancies; breach of the implied duty of good faith and fair dealing; and economic duress or economic coercion. Simmons filed separate motions for partial summary judgment as to each claim. Following two hearings on the motions, the circuit court granted Simmons summary judgment on all claims but the claim for breach of the implied duty of good faith and fair dealing. The court's order was entered on July 10, 2009. Thereafter, the Carters took a nonsuit as to the breach of the implied duty of good faith and fair dealing claim. On August 20, 2009, the circuit court entered the order from which this appeal is taken. The order granted the Carters' request for a nonsuit. It further provided:

Otherwise, and with respect to the issues determined by this Court's Order of July 10th 2009, the Court hereby finds:

1. All remaining issues pending in this case, other than the issues having to do with good faith and fair dealing in a contract action, which are now being voluntarily

²The complaint was originally filed in Pulaski County Circuit Court and later transferred to Jefferson County.

dismissed, were addressed and resolved in the Court's Order issued on the basis of all pending Motions for Summary Judgment in this case and as of July 10th, 2009.

2. All determinations of fact contained in the Order of July 10th, 2009, and all conclusions of law there stated, are incorporated herein by this reference just as fully as though set forth word for word here.

THIS ORDER AND JUDGMENT IS HEREBY ENTERED.

The order also contained a certification pursuant to Rule 54(b) of the Arkansas Rules of Civil Procedure that provided as follows:

Upon the basis of the foregoing factual findings, the court hereby certifies, in accordance with Rule 54(b)(1), *Ark. Rules Civ. Pro.*, that it has determined that there is no just reason for delay of entry of a final judgment and that the court has and does hereby direct that the judgment shall be a final judgment for all purposes.

The Carters filed their notice of appeal on September 14, 2009.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure–Civil provides that an appeal may be taken only from a final judgment or decree entered by the circuit court. The supreme court has held that a party that has several claims against another party may not take a voluntary nonsuit of one claim and appeal an adverse judgment as to the other claims when it is clear that the intent is to refile the nonsuited claim and thus give rise to the possibility of piecemeal appeals. *Haile v. Ark. Power & Light Co.*, 322 Ark. 29, 907 S.W.2d 122 (1995); *Ratzlaff v. Franz Foods of Ark.*, 255 Ark. 373, 500 S.W.2d 379 (1973). This is so because a voluntary nonsuit or dismissal leaves the plaintiff free to refile the claim, assuming there has been no previous dismissal. *Haile*, 322 Ark. at 32, 907 S.W.2d at 123; Ark. R. Civ. P. 41(a).

Arkansas Rule of Civil Procedure 54(b) permits an appeal from an order dismissing

some of the claims or parties when a final order disposing of all claims has not yet been rendered, but the court must execute a proper Rule 54(b) certificate to do so. The rule requires an express determination, “supported by specific factual findings,” that there is no just reason for delay, and the certificate must contain “the factual findings upon which the determination to enter the judgment as final is based.” Ark. R. Civ. P. 54(b)(1). The factual findings must demonstrate that a likelihood of hardship or injustice will occur unless there is an immediate appeal, and the court must set forth facts to support its conclusion. *Davis v. Wausau Ins. Co.*, 315 Ark. 330, 867 S.W.2d 444 (1993).

Here, the Rule 54(b) certificate contains no specific factual findings explaining why a hardship or injustice would result if an immediate appeal were not permitted. The certificate therefore does not meet the requirements of Rule 54(b) and is not sufficient to certify the appeal. See *Follett v. Fitzsimmons*, 100 Ark. App. 347, 268 S.W.3d 902 (2007); *Rutledge v. Christ Is The Answer Fellowship, Inc.*, 82 Ark. App. 221, 105 S.W.3d 816 (2003); *Stouffer v. Kralicek Realty Co.*, 81 Ark. App. 89, 98 S.W.3d 475 (2003). Accordingly, we must dismiss the appeal for lack of finality. The dismissal is without prejudice to refile at a later date. *Follett*, 100 Ark. App. at 350, 268 S.W.3d at 905.

Appeal dismissed.

GRUBER and BROWN, JJ., agree.