

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA09-1034

DAVID REES

APPELLANT

V.

DANIELLE McLAUGHLIN and
DONALD LATOURETTE

APPELLEES

Opinion Delivered SEPTEMBER 22, 2010

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT
[NO. DR-2004-677]

HONORABLE RUSSELL ROGERS,
JUDGE

DISMISSED

ROBERT J. GLADWIN, Judge

The subject of this appeal is the Craighead County Circuit Court’s denial of a motion to dismiss, which was based upon lack of subject-matter jurisdiction. Appellees Danielle McLaughlin and Donald Latourette sought and obtained an annulment of their marriage and further obtained agreed orders from the trial court awarding, among other things, custody, visitation, and child support involving the child, born during the marriage, that was not Latourette’s biological child. Appellant David Rees, the biological father of the child, has intervened in this annulment matter seeking dismissal and arguing on appeal that the trial court erred in ruling that it had jurisdiction to award custody and visitation rights in the annulment proceeding. We dismiss the appeal for noncompliance with Arkansas Rule of Civil Procedure 54 (2010).

McLaughlin and Latourette were married in July 2003, and during the year that followed, D.L. was born. McLaughlin and Latourette separated, and in August 2004, McLaughlin filed for divorce. Latourette counterclaimed for divorce, and both sought custody of the child. McLaughlin later amended her complaint to allege that Latourette was not D.L.'s biological father. Latourette then filed for an annulment based upon fraud, but sought custody and visitation of D.L. Agreements were reached and an annulment was granted in favor of Latourette on May 9, 2005. Custody and visitation orders were included in the annulment decree based upon the doctrine of *in loco parentis*, and after several post-annulment filings, an agreed order was filed on December 11, 2006, that modified portions of the custody and visitation language and added a support clause.

In the meantime, Davis Rees was adjudicated the biological father of D.L. in Greene County Circuit Court on January 19, 2006. Thereafter, Rees moved to intervene in this annulment matter seeking to terminate Latourette's rights with respect to the child. Rees filed a motion to vacate and argued that the trial court lacked jurisdiction to award visitation or custody to Latourette because his marriage to McLaughlin was annulled. Latourette argued waiver, estoppel, and laches in response to Rees's motion to vacate. By order of March 20, 2009, the trial court held that it did have jurisdiction to decide matters of visitation and custody despite having granted an annulment, but did not finalize every claim brought by the parties in the case. A Rule 54(b) certificate pursuant to Arkansas Rule of Civil Procedure 54

is included in the record at the end of the trial court's order. Rees filed a notice of appeal on April 20, 2009, and this appeal followed.

Rees contends that the trial court erred in ruling that it had jurisdiction to award custody and visitation rights in the annulment proceeding. Latourette argues that the trial court had jurisdiction to award custody and visitation in this proceeding, but that this court cannot reach the merits of the issue because we have no appellate jurisdiction. Pursuant to Rule 2 of the Rules of Appellate Procedure—Civil (2010), to be appealable, an order must be a final judgment or decree entered by the circuit court or an order that is not final and falls within the provisions of Rule 54(b) of the Rules of Civil Procedure. *See* Ark. R. App. P.—Civ. 2(1), (11). In *Lester v. Lester*, 48 Ark. App. 40, 41, 889 S.W.2d 42, 43 (1994) (citations omitted), we stated

Although Mr. Lester has not raised the issue, we cannot review this case on appeal because the order appealed from, the denial of appellant's motion to set aside the ex parte order for lack of jurisdiction, is not an appealable order. It is not a final decree within the meaning of Ark. R. App. P. 2(a)(1). In order to be final for purposes of appeal, a decree must in some way determine or discontinue the action and put the chancellor's directive into immediate execution, ending the litigation or at least a separable portion of it. Nor does this order fit within any of the other provisions of Ark. R. App. P. 2(a). While the trial court's jurisdiction of the subject matter is essential to an action, a ruling by the trial court that it has proper jurisdiction, even if erroneous, does not render such order appealable. Because a final order is a jurisdictional requisite the appellate court should raise the issue on its own motion. Although some might characterize jurisdiction as only a technicality, without it we are powerless to act.

Arkansas Rule of Civil Procedure 54(b) states as follows:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved,

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. In the event the court so finds, it shall execute the following certificate, which shall appear immediately after the court's signature on the judgment, and which shall set forth the factual findings upon which the determination to enter the judgment as final is based:

Rule 54(b) Certificate

With respect to the issues determined by the above judgment, the court finds:

[Set forth specific factual findings.]

Upon the basis of the foregoing factual findings, the court hereby certifies, in accordance with Rule 54(b)(1), Ark. R. Civ. P., that it has determined that there is no just reason for delay of the 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.

Certified this _____ day of _____, _____.

Judge

The Arkansas Supreme Court set forth the standard of review for a Rule 54(b) certification in *Bayird v. Floyd*, 2009 Ark. 455, at 4, 344 S.W.3d 80, 83-84 (citations omitted) as follows:

[A] trial court's Rule 54(b) findings and certifications are reviewable for abuse of discretion, with some deference given to the trial court's decision, since that court is the one most likely to be familiar with the claims and the parties in the case. However, as we have previously acknowledged, the requirement of a final judgment is the cornerstone of appellate jurisdiction, therefore even a trial court's strict compliance with Rule 54(b)'s required findings and certifications are not binding upon this court. As this court has stated, merely tracking the language of Rule 54(b) will not suffice; the record must show facts to support the trial court's conclusions. This is because it is our duty to ensure, *sua sponte* if necessary, that the limits of our jurisdiction are observed. Thus, "our role on appeal 'is not to reweigh the equities or reassess the facts but to make sure that the conclusions derived from those weighings and assessments are judicially sound and supported by the record.'"

We agree with Latourette's contention that the trial court's order determining that it did have jurisdiction is not a final, appealable order because it did not dispose of all the claims in the case. Further, we agree that Rees unsuccessfully attempted to create a final order through Rule 54(b) certification in that the certification fails to meet the rule's requirements. The certification does not contain an express determination, supported by specific factual findings, that there is no just reason for delay of an appeal. *See Ark. R. Civ. P. 54(b)(1)*.

The certification states:

The finding that the Circuit Court did have jurisdiction, in an annulment action, to enter orders of custody and visitation pertaining to a child of one party, but not of both parties, denying the Motion to Set Aside for lack of jurisdiction is a final adjudication of the issue of jurisdiction.

The above conclusion contains no facts to support certification under Rule 54(b). Factual underpinnings to support a Rule 54(b) certification must be set out in the trial court's order. *See Kowalski v. Rose Drugs of Dardanelle, Inc.*, 2009 Ark. 524; *Howard v. Dallas Morning News, Inc.*, 324 Ark. 91, 918 S.W.2d 178 (1996); *Wormald U.S., Inc. v. Cedar Chem. Corp.*, 316 Ark. 434, 873 S.W.2d 152 (1994). Further, the certification failed to conform to Rule 54(b) in that the trial judge's signature is not affixed to the certificate as provided in the form within Rule 54(b). Therefore, this court is without jurisdiction to hear this appeal, as the order is neither final nor properly certified for review under Rule 54(b).

Appeal dismissed.

GLOVER and ABRAMSON, JJ., agree.