Cite as 2018 Ark. App. 483

# ARKANSAS COURT OF APPEALS

DIVISION II
**No.** CV-17-1085

**Opinion Delivered:** October 3, 2018

| | | |
|---|---|---|
| MONTIE HOBSON | APPELLANT | APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. 04DR-15-48] |
| V. | | |
| GEORGE HOBSON | APPELLEE | HONORABLE DOUG SCHRANTZ, JUDGE |
| | | DISMISSED WITHOUT PREJUDICE; APPELLEE'S MOTION FOR FEES AND COSTS DENIED WITHOUT PREJUDICE |

**WAYMOND M. BROWN, Judge**

Appellant Montie Hobson appeals the Benton County Circuit Court's denial of her motion for a new trial. She argues on appeal that the court erred by (1) failing to rule on her breach of contract action against appellee, (2) failing to make a finding that appellee breached the contract and that appellant suffered damages,[1] and (3) ruling that appellee's AEP System Retirement Savings Plan was not included in paragraph 9 of the parties' mediation agreement. We must dismiss this appeal for lack of a final order.

The parties were divorced on September 17, 2015. A Memorandum of Understanding was incorporated into the divorce decree. It stated that George would

[1]There's a sub-issue concerning the court's allowance of a settlement email into evidence.

"refinance the indebtedness on the [martial home] and hold Montie harmless from any liability owed thereon within 60 days of the Divorce."

Appellant filed a counterclaim against appellee on November 28, 2016, for contempt–custody and visitation, breach of contract and contempt–refinance debt on home, and child support. Appellee filed an answer on December 2, 2016, denying the material allegations of the counterclaim. Appellant filed an amended counterclaim on May 26, 2017, incorporating the allegations in the original counterclaim and adding a breach of contract–retirement action. Appellee filed an answer to the amended counterclaim on May 31, 2017. A hearing took place on July 13, 2017. The court entered an order on August 3, 2017, finding that appellee was not in contempt. The court also found that appellee's AEP System Retirement Savings Plan was not included in paragraph 9 of the mediation agreement of the parties for which appellant was entitled to 53 percent.

Appellant filed a motion for new trial on August 13, 2017, and it was deemed denied by operation of law after thirty days. Appellant filed a notice of appeal and designation of record on October 9, 2017. Paragraph 4 stated the following:

> Defendant is not abandoning her right to file an independent action for Relief from the Orders entered August 3, 2017 on the basis of misrepresentation and/or fraud; Defendant is not abandoning any matter related to the AEP retirement; and Defendant is not abandoning any matter related to the refinance of the debt on the marital home. Defendant is abandoning unresolved pending claims made in the Counterclaim that are not mentioned in this Notice of Appeal.

Appellee filed an objection to appellant's notice of appeal and designation of record on November 1, 2017, contending that appellant attempted to appeal a non–final order and to preserve a right to independent actions on issues that were either litigated in this case or

should have been litigated. Appellee filed a motion to dismiss the appeal for lack of finality on February 28, 2018, which was denied on March 7, 2018.

Arkansas Rule of Appellate Procedure–Civil 2(a)(1) provides that an appeal may be taken only from a final judgment or decree entered by the circuit court. Arkansas Rule of Civil Procedure 54(b) provides that when more than one claim for relief is presented in an action or when multiple parties are involved, an order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not a final, appealable order.[2] Rule 54(b) allows a trial court, when it finds no just reason for delaying an appeal, to direct entry of a final judgment as to fewer than all the claims or parties by executing a certification of final judgment as it appears in Rule 54(b)(1). However, absent this required certification, any judgment, order, or other form of decision that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action.[3]

Appellant attempts to appeal from the court's denial of her motion for a new trial in which she contends that the court failed to address a specific complaint she made against appellee. Although Rule 2(a)(3) provides that appeals may be taken from orders refusing a new trial, the rule contemplates an appeal from an order granting or refusing a new trial in cases in which all issues have been presented and decided. It can have no application in cases involving multiple issues or claims in which some, but not all, are decided.[4] This finality issue could have been resolved if appellant had sought a Rule 54(b) certification or

---

[2]*Miracle Kids Success Acad., Inc. v. Maurras*, 2016 Ark. App. 445, 503 S.W.3d 94.

[3]*Miracle Kids*, *supra*.

[4]*See Rusin v. Midwest Enamelers, Inc.*, 21 Ark. App. 226, 731 S.W.2d 226 (1987).

had not tried to preserve a right to bring further actions in her notice of appeal. We dismiss due to lack of a final order.

George has moved this court to award him attorney's fees and costs for having to prepare a supplemental abstract and addendum. The supplemental material was not needed to determine whether we have jurisdiction, so the motion is denied without prejudice.

Dismissed without prejudice; appellee's motion for fees and costs denied without prejudice.

GRUBER, C.J., and WHITEAKER, J., agree.

*Montie Hobson*, pro se appellant.

*Matthews, Campbell, Rhoads, McClure & Thompson, P.A.*, by: *Sara L. Waddoups*, for appellee.