

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-19-187

THE FAIRWAYS AT MARION, A
LIMITED PARTNERSHIP
APPELLANT

V.

MARY JEFFERSON
APPELLEE

Opinion Delivered: December 11, 2019

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. 18CV-18-700]

HONORABLE RALPH WILSON, JR.,
JUDGE

DISMISSED

MIKE MURPHY, Judge

Appellant, the Fairways at Marion, an apartment complex in Marion, Arkansas, appeals the November 16, 2018 order of the Crittenden County Circuit Court denying it a writ of possession to an apartment that was, at the time, leased by the appellee, Mary Jefferson. We hold that the order from which the Fairways appeals is not a final order, and we dismiss the appeal.

Mary Jefferson began leasing an apartment from the Fairways in 2014. Sometime in 2018, Jefferson got behind on her rent. On July 9, 2018, the Fairways served Jefferson with a notice to vacate and a demand for possession. The Fairways then sued Jefferson for unlawful detainer. Jefferson answered and counterclaimed for the tort of outrage, forcible entry and detainer in violation of Arkansas Code Annotated section 18-60-303(1) (Repl. 2015), breach of the implied covenant of quiet enjoyment, and for an injunction and temporary restraining order.

A hearing was held on October 8, 2018. There, the court denied the appellant's writ of possession and denied Jefferson's request for a temporary restraining order. Instead, it ordered that Jefferson be allowed to reoccupy the property (the Fairways had changed the locks); found that Jefferson was indebted to the Fairways for \$2,760.50 for past-due rent, late fees, and attorneys' fees; and ordered Jefferson to repay the debt in monthly installments. Notably, the court did not rule on Jefferson's counterclaims for outrage, forcible entry and detainer, and breach of the implied covenant of quiet enjoyment. The Fairways appealed, and on appeal it argues that the trial court erred when it denied it a writ of possession. It further argues that ordering Jefferson to pay damages was contradictory to its denial of a writ of possession, and thus error.

However, Jefferson contends, and we agree, that the order from which the Fairways appeals is not a final order. 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 trial court. *Searcy Cty. Counsel for Ethical Gov't v. Hinchey*, 2011 Ark. 533. Under Arkansas Rule of Civil Procedure 54(b), an order that fails to adjudicate all the claims as to all the parties, including counterclaims, is not final for purposes of appeal. *Dodge v. Lee*, 350 Ark. 480, 88 S.W.3d 843 (2002). Although Rule 54(b) provides a method by which the circuit court may direct entry of final judgment as to fewer than all the claims or parties, where there is no attempt to comply with Rule 54(b), the order is not final, and we must dismiss the appeal. *Harrill & Sutter, PLLC v. Farrar*, 2011 Ark. 181.

Dismissed.

SWITZER and VAUGHT, JJ., agree.

Summer W. McCoy and Georganne Mourney, for appellant.

Legal Aid of Arkansas, Inc., by: Jason Auer, for appellee.