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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-21-207

MARY "LARITA" SPRUELL AND ALLISON SPRUELL APPELLANTS	**Opinion Delivered** April 6, 2022
V.	APPEAL FROM THE LAFAYETTE COUNTY CIRCUIT COURT [NO. 37CV-19-64]
JEDIDIAH E. DUNN, INDIVIDUALLY; AND BOBBY STOKES, INDIVIDUALLY AND D/B/A HOT SPRINGS CARRIAGE COMPANY, INC. APPELLEES	HONORABLE KIRK JOHNSON, JUDGE DISMISSED WITHOUT PREJUDICE

BART F. VIRDEN, Judge

Mary Spruell and Allison Spruell appeal the Lafayette County Circuit Court's decision granting summary judgment as to Jedidiah Dunn, individually; and Bobby Stokes, both individually and d/b/a Hot Springs Carriage Company, Inc. Because the circuit court's order is not a final, appealable order as required by Arkansas Rule of Appellate Procedure–Civil 2 and Arkansas Rule of Civil Procedure 54(b), we dismiss without prejudice.

On August 26, 2019, Mary Spruell and Allison Spruell (Spruells) filed a complaint against Jedidiah Dunn and Bobby Stokes d/b/a Hot Springs Carriage Company, Inc., and two other defendants, Maria Rodelo and Adrian Garcia. The Spruells alleged that on December 1, 2018, Dunn was operating the horse-drawn carriage in which they were passengers, when Rodelo, who was driving Garcia's Honda Accord, struck the carriage as

she switched lanes without maintaining a proper lookout for traffic. The Spruells asserted that Dunn's negligent and reckless operation of the carriage contributed to the accident, and the carriage was not crashworthy or equipped with the necessary lighting or reflectors for nighttime operation on a public roadway. The Spruells claimed that they suffered personal injury, pain and suffering, and loss of income.

On February 26, 2020, Dunn (individually) and Stokes (individually and d/b/a Hot Springs Carriage Company) moved to dismiss the complaint pursuant to Arkansas Rule of Civil Procedure 12(b)(6), contending that they are entitled to statutory immunity for personal injuries arising out of "equine activities" pursuant to Arkansas Code Annotated section 16-120-202(a)(1) (Repl. 2016). On January 25, 2021, the circuit court entered an order of dismissal, finding that riding in a horse-drawn carriage is an equine activity as set forth in Arkansas Code Annotated section 16-120-201(2)(D) (Repl. 2016), and the Spruells were "participants" as defined by Arkansas Code Annotated section 16-120-201(9). The court found that the appellees had not waived statutory immunity, and none of the five exceptions set forth in Arkansas Code Annotated section 16-120-202(a)(2)(A)–(E) applied to this case.

On February 24, the Spruells filed a notice of appeal and a motion for Rule 54(b) certification, which the circuit court never ruled on and was deemed denied. On appeal, the Spruells raise several issues regarding statutory immunity; however, we must dismiss the case for lack of jurisdiction.

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 a circuit court. An

order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties in a case involving multiple claims, multiple parties, or both is final and appealable if the circuit court has directed entry of a final judgment as to one or more but fewer than all of the claims or parties and has made an express determination, supported by specific factual findings, that there is no just reason for delay and has executed the certificate required by Rule 54(b) of the Rules of Civil Procedure. Ark. R. App. P.–Civ. 2(a)(11).

In *Jones v. Huckabee*, 363 Ark. 239, 213 S.W.3d 11 (2005), the supreme court addressed the finality of an order in which the circuit court's dismissal of certain defendants from the case was based on statutory immunity under the Arkansas Civil Rights Act, while other nonimmune defendants remained in the case. Jones filed a complaint against Governor Huckabee, the Arkansas Crime Information Center (ACIC), and Charles Pruitt as well as John Does 1–20. Huckabee, ACIC, and Pruitt moved to dismiss the complaint pursuant to the statutory-immunity provision in the Act (they made additional arguments regarding dismissal not relevant here), and the circuit court granted the motion as to "all defendants except for John Does 1–20," explaining that not every defendant was immune from suit. Citing Rule 54(b), the supreme court held that "there is neither a final order as to the John Does 1–20, nor is there a 54(b) certification" and dismissed without prejudice for a lack of jurisdiction "so the circuit court may enter an order as to the remaining defendants, John Does 1–20."

Rule 54(b) provides the following in pertinent part:

> (1) *Certification of Final Judgment*. 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[.]
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> . . . .
>
> (2) *Lack of Certification*. Absent the executed certificate required by paragraph (1) of this subdivision, any judgment, order, or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the judgment, order, or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all of the parties.

In the instant case, there is neither a final order as to Maria Rodelo or Adrian Garcia nor is there a Rule 54(b) certification. For those reasons, our court has no jurisdiction to hear this case, and we dismiss it without prejudice.

Dismissed without prejudice.

ABRAMSON and MURPHY, JJ., agree.

Crane, Phillips & Rainwater, PLLC, by: *Ryan P. Phillips*, for appellants.

Anderson, Murphy & Hopkins, L.L.P., by: *Michael P. Vanderford* and *Mark D. Wankum*, for appellees.