Cite as 2022 Ark. App. 241

ARKANSAS COURT OF APPEALS

DIVISION I
No. CV-19-774

REUBEN ELDRIDGE AND SANDRA ELDRIDGE APPELLANTS/CROSS-APPELLEES	**Opinion Delivered** May 18, 2022
V.	APPEAL FROM THE INDEPENDENCE COUNTY CIRCUIT COURT [NO. 32E-95-568]
JERRY WAUGH APPELLEE/CROSS-APPELLANT	HONORABLE HOLLY MEYER, JUDGE
	DISMISSED WITHOUT PREJUDICE

MIKE MURPHY, Judge

This is an appeal from an order granting a motion for a new trial and motion to vacate, alter, and amend judgment. The judgment vacated was the circuit court's May 24, 2019, grant of summary judgment in favor of the appellants, Reuben and Sandra Eldridge (collectively referred to as the "Eldridges"). The Eldridges maintain on appeal that the circuit court erred by granting appellee Jerry Waugh's (Waugh) motion for a new trial and setting aside the order granting summary judgment. Waugh cross-appeals, arguing that summary judgment was improper, and the complaint should have been dismissed for various jurisdictional reasons as well as failure to state a claim upon which relief can be granted. However, we do not reach the merits herein but instead dismiss the appeal and cross-appeal without prejudice for lack of a final order.

In 1986, Reuben Eldridge was injured in a motor-vehicle accident caused by an employee of Rising Fast Trucking Company, Inc. (RFTC), in Jefferson County, Arkansas.

Waugh was the president of RFTC. A jury verdict and judgment was entered against RFTC on the issue of liability. Subsequently, the Eldridges obtained an agreed judgment against RFTC on April 21, 1992, in the amount of $3 million. Between the date of the accident and the stipulated judgment, Waugh entered into a purchase and sale agreement with Alliance Transportation, Inc., for RFTC and its assets. Thereafter, RFTC changed its name to RABC, Inc., and its corporate charter was subsequently revoked on December 19, 1991, for nonpayment of franchise taxes.

On February 23, 1993, Waugh sought Chapter 7 bankruptcy and received a discharge. Because Waugh did not give the Eldridges notice of the bankruptcy, the bankruptcy court reopened the case. The bankruptcy court found that any debt Waugh owed to the Eldridges was dischargeable. *See Eldridge v. Waugh*, 198 B.R. 545 (E.D. Ark. 1995). The Eldridges appealed to the United States District Court, which reversed, and the Eighth Circuit Court of Appeals affirmed. *See In re Waugh*, 95 F.3d 706 (8th Cir. 1996).

On April 16, 1993, the Eldridges sued Waugh, among many others, in Pulaski County Chancery Court to collect on the agreed judgment from RFTC. The Eldridges alleged that after the 1986 accident, Waugh and his corporations began conveying assets to evade creditors. The matter was then transferred from Pulaski County to the Independence County Circuit Court. Both parties moved for summary judgment in 1995; however, the record was silent until the circuit court entered an order in favor of the Eldridges on May 12, 2008. The circuit court held that "the plaintiff's motion for summary judgment to pierce the corporate veil is granted to the extent of [sic] the 8th Circuit Court of Appeals held that the defendant Jerry Waugh engaged in transactions to the benefit of himself and to the

detriment of the plaintiffs Reuben and Sandra Eldridge." Furthermore, the circuit court held that the Eldridges would continue to have the burden of proof at trial to show which, if any, of the transactions were fraudulent.

For reasons unbeknownst to this court, nothing moved forward in this matter until 2017. The circuit court held a hearing in May 2017 and ultimately entered an order that accepted the 2008 order referenced above and invited the Eldridges to set the matter for trial. On September 6, 2018, the Eldridges filed another motion for summary judgment on the remaining count of Waugh's personal liability for the $3 million judgment. After a hearing, the circuit entered an order granting summary judgment to the Eldridges and a judgment consistent with that order on May 24, 2019. The court based its ruling heavily on its assumption that the corporate veil had been pierced on the basis of res judicata in *Eldridge v. Waugh*, 198 B.R. 545.

Waugh immediately filed a motion for a new trial and a motion to vacate, alter, and amend the judgment. As a result, the circuit court stayed execution of its judgment, and on July 1, 2019, the court entered an order granting the motion for a new trial and motion to vacate, alter, and amend judgment. In the order, the circuit court candidly insisted that its prior ruling and subsequent judgment was erroneous and was vacated to avoid a miscarriage of justice. The court further held that, contrary to the contention of the Eldridges, the bankruptcy court never adjudicated the claim of Waugh's personal liability or the piercing RFTC's corporate veil. Rather, the circuit court explained, the federal district court merely stated that there was "ample evidence which would permit the Arkansas court to pierce the corporate veil and hold Waugh personally liable for the RFTC debt." Finally, the circuit

court clarified that the two prior circuit court judges who considered the res judicata issues determined only that the corporate veil would be pierced "to the extent it was pierced by the Eighth Circuit." In conclusion, the circuit court granted Waugh's motions pursuant to Arkansas Rules of Civil Procedure 59 and 60 and thereafter scheduled the matter for a jury trial on November 2–6, 2020. The Eldridges filed a notice of appeal on July 26, 2019, and Waugh filed his cross-appeal on August 5, 2019.

We, however, cannot address the merits of the appeal or cross-appeal because the parties have appealed a nonfinal order. Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure–Civil provides that an appeal may be taken from a final judgment or decree entered by a circuit court. The finality of a circuit court's judgment or decree is a jurisdictional requirement, and its purpose is to avoid piecemeal litigation. *See Roach v. Roach*, 2019 Ark. App. 34, at 5, 571 S.W.3d 487, 490. "For a [decree] to be final and appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy." *Davis v. Davis*, 2016 Ark. 64, at 5, 487 S.W.3d 803, 806. It must also "put the court's directive into execution, ending the litigation or a separable part of it." *Id.* at 5–6, 487 S.W.3d at 806. A decree that contemplates further judicial action is not final. *Roach*, 2019 Ark. App. 34, at 5, 571 571 S.W.3d at 490.

Despite the extraordinary length of time this matter has remained unresolved, none of the proceedings resulted in a final order until the vacated May 24, 2019 judgment. With that being said, the order on appeal expressly made three findings that are all pertinent to our finality determination. First, the circuit court expressly set aside and vacated its May 24, 2019 order granting summary judgment and the accompanying judgment against Waugh,

pursuant to Ark. R. Civ. P. 60(a), which grants a circuit court jurisdiction for ninety days after entry of the order and judgment to correct errors or mistakes or to prevent the miscarriage of justice. Second, the court denied the Eldridges' motion for summary judgment. Third, the circuit court granted Waugh's motion for new trial, pursuant to Ark. R. Civ. P. 59, so that the matter could proceed to trial on the merits.

Here, the Eldridges appeal the circuit court's grant of a new trial pursuant to Rule 2(a)(3) of the Arkansas Rules of Appellate Procedure–Civil. Rule 2(a)(3) provides that an appeal may be taken from an order that grants or refuses a new trial. However, the mere fact that our appellate rules authorize an appeal from an order granting or refusing a new trial does not mean that an appellant can appeal from an order that otherwise lacks finality. *See Anderson-Tully Co. v. Vaden*, 2018 Ark. App. 484, at 5, 562 S.W.3d 249, 251.

To support their argument in favor of finality, the Eldridges contend that the circuit court set aside the May 24, 2019 order and judgment "only in the context of granting a motion for new trial." We disagree. While the order on appeal granted both of Waugh's motions simultaneously, the circuit court focused almost exclusively on the reasons why its prior summary-judgment order was erroneous and must be set aside. Accordingly, even if this court reversed the circuit court's grant of a new trial, we are still left with an order setting aside summary judgment for the plethora of reasons that the circuit court went to great lengths to explain.

It is well established that a denial of a summary judgment is not a final, appealable order. *White River Health Sys., Inc. v. Long*, 2018 Ark. App. 284, 551 S.W.3d 389. However, our analysis does not stop there when the order on appeal is one that vacates and sets aside

a circuit court's prior summary-judgment order. *See Citibank, N.A. v. Carruth*, 2015 Ark. App. 704. *CitiBank* involved an appeal from a circuit court's order vacating its prior order of summary judgment. *Id.* The circuit court held that it mistakenly awarded summary judgment and therefore issued an order setting aside summary judgment and held that the motion was denied. Citibank appealed the order vacating judgment, and the appellee argued that the order on appeal was not a final order. Because the judgment was vacated after the ninety-day limitation set forth in Ark. R. Civ. P. 60, this court held that the order was final and subject to an immediate appeal. Here, however, the circuit court vacated its judgment well within ninety days; therefore, *Citibank* does not apply.

In *Lamb v. JFM, Inc.*, 311 Ark. 89, 842 S.W.2d 10 (1992), the supreme court made a distinction between an order that merely vacates a judgment within ninety days of entry and an order that vacates a judgment within ninety days but also grants a new trial. Specifically, the court held that an order vacating a judgment does not discharge the parties from the court but rather puts them back in the position they were in before the judgment was entered. Accordingly, an order vacating a judgment within ninety days is not appealable. *Id.* The court held, however, that an important distinction exists when the order vacating judgment within ninety days also grants a new trial. The deciding factor in that instance, the court held, is whether there had been a complete trial with both parties present to fully contest both the merits and the damages, and granting a new trial is the "gist of the ruling." *Id.* at 92–93, 842 S.W.2d at 12. The court held as follows:

> [I]f after a complete adversarial proceeding, a trial court grants a new trial under Rule 59 of the Arkansas Rules of Civil Procedure, the order granting the new trial is appealable. However, the rules of appellate procedure do not give such a right of

> appeal when a judgment is obtained after less than a complete adversarial proceeding and is vacated within ninety days under Rule 60.

(Citations omitted.)

This case has remained unresolved for nearly three decades. As discussed above, and acknowledged by the circuit court in its order, no prior proceeding has ever fully adjudicated the claim or issue of Waugh's personal liability or the piercing of RFTC's corporate veil. Rather, the circuit court held that res judicata applied and nunc pro tunc altered the consent judgment from 1992 against RFTC to include Waugh as a defendant in that judgment and personally liable for the sum of $3 million plus interest. Accordingly, we conclude that the vacated judgment was not the result of an adversarial proceeding that constituted a complete trial with both parties present to fully contest the merits and damages. Furthermore, we decline to characterize the grant of a new trial as the "gist of the ruling." To the contrary, the order on appeal spanned seven pages, six of which the circuit court devoted to explaining the various reasons why its prior grant of summary judgment was erroneous. Pursuant to *Lamb*, therefore, we do not have an appealable order and lack jurisdiction to address the parties' challenges to such order. We dismiss the appeal without prejudice.

Dismissed without prejudice.

GLADWIN and BARRETT, JJ., agree.

Baker Schulze Murphy & Patterson, by: *J.G. "Gerry" Schulze*, for appellants/cross-appellees.

Blair & Stroud, by: *Barrett S. Moore*, for appellee/cross-appellant.