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ARKANSAS COURT OF APPEALS

DIVISION I

No. CV-22-166

JOHN WESLEY HALL, JR., AND
ALISON HALL, HUSBAND AND WIFE
APPELLANTS

V.

ARKANSAS STATE HIGHWAY
COMMISSION

APPELLEE

Opinion Delivered March 15, 2023

APPEAL FROM THE CLEBURNE
COUNTY CIRCUIT COURT
[NO. 12CV-11-190]

HONORABLE HOLLY MEYER,
JUDGE

REMANDED FOR
SUPPLEMENTATION OF THE
RECORD

N. MARK KLAPPENBACH, Judge

Appellants John Wesley Hall, Jr., and Alison Hall bring this appeal from the order of the Cleburne County Circuit Court dismissing with prejudice their counterclaim against the Arkansas State Highway Commission. We are unable to reach the merits of the appeal due to deficiencies in the record. Therefore, we remand for supplementation of the record.

According to appellants, the Arkansas State Highway Commission filed an eminent-domain action against them on September 2, 2011, and the case was set for trial in November 2021. Appellants filed a counterclaim on October 13, 2021. The circuit court dismissed the counterclaim on the Commission's motion, and after a hearing, the court denied appellants' motion to reconsider the dismissal. Appellants filed a notice of appeal, which

designated an abbreviated record on appeal. The record items designated were the counterclaim, motion to dismiss, order of dismissal, motion for reconsideration and response and reply thereto, and the order denying the motion for reconsideration. These limited record items leave us unable to confirm our appellate jurisdiction and address the merits of the appeal.

Whether an order is final and subject to appeal is a jurisdictional question that the court will raise on its own. *Young v. Smith*, 2012 Ark. App. 340. Subject to enumerated exceptions not applicable here, an appeal may be taken only from a final judgment or decree entered by the circuit court. Ark. R. App. P.-Civ. 2(a)(1). An order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not final in the absence of certification by the circuit court pursuant to Arkansas Rule of Civil Procedure 54(b).

Appellants' brief states that the Commission's eminent-domain action was tried to a jury and that an order on the verdict was entered on November 29, 2021. Appellants included an order entered that date in their notice of appeal, but they did not designate the order for the record on appeal. Appellants also failed to designate the Commission's complaint and any amended complaints, but the case caption in the record shows multiple defendants in addition to appellants. Without the complaint, pleadings asserting additional claims, and orders disposing of all claims and parties, we are unable to determine whether there is a final order such that we may hear appellants' appeal.

Rule 6(c) of the Arkansas Rules of Appellate Procedure–Civil provides, in pertinent part, “Where parties in good faith abbreviate the record by agreement or without objection from opposing parties, the appellate court shall not affirm or dismiss the appeal on account of any deficiency in the record without notice to appellant and reasonable opportunity to supply the deficiency.” There is no indication that the Commission objected to the abbreviated record. Accordingly, pursuant to Rule 6, we allow appellants the opportunity, within twenty-one days from the date of this opinion, to supplement the record so that we can determine whether the judgment appealed from is final. *See Delmar Mgmt., Inc. v. Mackey*, 2018 Ark. App. 593.

Remanded for supplementation of the record.

WOOD and HIXSON, JJ., agree.

John Wesley Hall, for appellants.

M. Todd Elder and Kelsey Bateman, for appellee.