

Cite as 2024 Ark. App. 162  
**ARKANSAS COURT OF APPEALS**  
DIVISION I  
No. CV-23-4

BEN MOTAL

APPELLANT

V.

JOHN DOE AND STATE FARM  
MUTUAL AUTOMOBILE INSURANCE  
COMPANY

APPELLEES

Opinion Delivered March 6, 2024

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
ELEVENTH DIVISION  
[NO. 60CV-19-6738]

HONORABLE PATRICIA JAMES,  
JUDGE

REVERSED; ORDERS VACATED

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**BART F. VIRDEN, Judge**

Appellant Ben Motal appeals from the Pulaski County Circuit Court’s order denying his motion for a stay and holding him in contempt and from its order dismissing with prejudice his complaint against appellees State Farm Mutual Automobile Insurance Company and a John Doe defendant. Motal argues that the trial court lacked jurisdiction to act while his appeal involving a service issue on the John Doe defendant was pending. He also contends that the trial court lacked jurisdiction to adjudicate the claims below due to the lack of service on the John Doe defendant. We agree with Motal’s first point and do not reach his second point. Because the trial court lacked jurisdiction to act further in the matter after the record had been lodged in the companion case referenced above, *Motal v. John Doe*,

2024 Ark. App. 161, case No. CV-22-394, also handed down today, we reverse and vacate the orders on appeal.

### I. *Background*

In September 2019, Motal filed a negligence lawsuit for personal injuries sustained following a hit-and-run accident that occurred in October 2018. In the complaint, he named his insurer, State Farm, and the unknown individual driving the car that hit him. Motal's insurance policy provides under the section for uninsured-motorist coverage that, if there is no agreement on an insured's entitlement to compensatory damages, a lawsuit must be filed naming both State Farm and the owner and driver of the uninsured vehicle. The policy also provides that State Farm has a contractual right to contest the issues of liability and damages.

In the companion case referenced above, Motal alleged in an affidavit filed with his complaint that he had been unable to identify the driver of the car that hit him or to discover the driver's whereabouts after a diligent inquiry. Motal thus sought to serve the John Doe defendant by warning order. On March 1, 2022, the trial court denied Motal's renewed motion for service by warning order. Motal filed a notice of appeal on March 30, and the record was lodged on June 27. Despite this, the proceedings below continued.

On June 30, the trial court entered an amended scheduling order setting a jury trial for September 7. Motal filed a motion to stay the proceedings on September 6.<sup>1</sup> Motal did

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<sup>1</sup>Both parties refer to Motal's having filed on September 3 a petition for writ of prohibition or certiorari and for temporary relief in *case No. CV-22-394*, which was denied without opinion through a formal order entered by the Arkansas Supreme Court on September 15. While State Farm acknowledges that the formal order is not in the record in

not thereafter appear for the jury trial. On September 7, the trial court entered an order denying Motal's motion for a stay and holding him in contempt. The trial court acknowledged that Motal had filed a notice of appeal in case No. CV-22-394 and commented on Motal's failure to seek an Ark. R. Civ. P. 54(b) certification of final judgment. On September 8, the trial court also entered an order dismissing Motal's complaint with prejudice. Motal filed a timely notice of appeal from both the September 7 and 8 orders.

## II. Discussion

Motal argues that the trial court's orders are null and void because it lacked jurisdiction to take further action after he had lodged the record in case No. CV-22-394. We agree. An appellate court always has the power and duty to determine whether jurisdiction exists. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). Once the record is lodged in the appellate court, the trial court no longer exercises jurisdiction over the parties and the subject matter in controversy and loses jurisdiction to act further in the matter. *Myers v. Yingling*, 369 Ark. 87, 251 S.W.3d 287 (2007). A trial court retains only limited subject-

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the current appeal, case No. CV-23-4, State Farm nevertheless "adopts and incorporates" the formal order and improperly reproduces it in its appellate brief. Referring to the formal order, State Farm proclaims that "[Motal]'s position has already been adjudicated on the merits by the Supreme Court" and that the formal order is a mandate and now law of the case. We note that there has been no request by either party to supplement the record with, or to take judicial notice of, the supreme court's formal order. We do not consider matters outside the record. *Whitford v. Daniels*, 263 Ark. 222, 563 S.W.2d 469 (1978); *Nw. Nat'l Bank v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 25 Ark. App. 279, 757 S.W.2d 182 (1988). In any event, the law is clear that a court cannot take judicial notice of the record in a separate case, even between the same parties. *Braswell v. Gehl*, 263 Ark. 706, 567 S.W.2d 113 (1978); *Merritt v. Thornton*, 2010 Ark. App. 735.

matter jurisdiction over matters that are independent of, or collateral or supplemental to, the matters on appeal. *Box v. J.B. Hunt Transp., Inc.*, 2019 Ark. App. 334, 578 S.W.3d 719.

The appellate court then retains jurisdiction over a case until it issues a mandate to the trial court instructing it to “recognize, obey, and execute” the appellate court’s decision. *James v. Williams*, 372 Ark. 82, 87, 270 S.W.3d 855, 859 (2008). Before the issuance of the mandate, no party to the lawsuit can obtain relief from the trial court for any matter that is “so intertwined with the primary litigation as to be part and parcel of it.” *Id.* at 87, 270 S.W.3d at 859. While State Farm asserts that the trial court here maintained jurisdiction “to determine existing disputed facts of consequence that are wholly independent of the issue of [Motal]’s improper venture of service on the [John] Doe defendant,” State Farm does not elaborate on this argument or explain how the trial court’s continued proceedings were wholly independent of the matter on appeal. Instead, State Farm focuses its arguments on matters outside the record as discussed in footnote 1.

We hold that the trial court lacked jurisdiction to act in this matter after we took jurisdiction of the case with the lodging of the record for appeal. Actions taken by a court without jurisdiction are null and void. *Jackson v. IberiaBank*, 2022 Ark. App. 94. We therefore reverse and vacate the trial court’s September 7 and 8 orders.

Reversed; orders vacated.

GLADWIN and WOOD, JJ., agree.

*Ben Motal*, for appellant.

*Matthew, Sanders & Sayes, P.A.*, by: *Mel Sayes*, for appellee.