

Amanda KILCREASE v. Dr. James BUTLER, M.D.

86-173

724 S.W.2d 169

Supreme Court of Arkansas
Opinion delivered February 23, 1987

1. APPEAL & ERROR — ORDER NOT APPEALABLE — JURISDICTIONAL REQUIREMENT. — Since having an appealable order is a jurisdictional requirement, the supreme court is obliged to raise the fact that the order appealed from is not an appealable order even when the parties do not.
2. APPEAL & ERROR — DISMISSAL OF ONLY ONE OF SEVERAL DEFENDANTS. — The rules of civil procedure do not permit an appeal from an order dismissing one defendant when other defendants remain unless ARCP Rule 54(b) is complied with.

Appeal from Johnson Circuit Court; *John S. Patterson*, Judge; dismissed.

Witt Law Firm, P.C., by: *R. Kevin Barham*, for appellant.

Daily, West, Core, Coffman & Canfield, by: *Ben Core* and *Jan West Whitt*, for appellee.

STEELE HAYS, Justice. Amanda Kilcrease brought suit against Drs. Roy Gene Girkin, Dennis R. Fecher and James Butler for the wrongful death of her husband, allegedly caused by medical malpractice.

[1] Dr. Butler moved for the dismissal of the complaint as to him under ARCP Rule 12(b). The circuit court granted the motion and Mrs. Kilcrease has appealed. We dismiss the appeal

for the lack of an appealable order, a jurisdictional requirement we are obliged to raise even when the parties do not. *Arkansas Savings and Loan v. Corning Savings and Loan Association*, 252 Ark. 264, 478 S.W.2d 431 (1972).

[2] This is yet another attempt to appeal from an order dismissing one defendant when other defendants remain and ARCP Rule 54(b) is not complied with. We have issued numerous reminders that the rules of civil procedure do not permit an appeal in such cases except in accordance with Rule 54(b). *Arkholo Sand & Gravel Co. v. Hutchinson*, 289 Ark. 313, 711 S.W.2d 474 (1986); *Sherman v. G & H Transportation, Inc.*, 287 Ark. 25, 695 S.W.2d 832 (1985); *Tulio v. Arkansas Blue Cross and Blue Shield, Inc.*, 283 Ark. 278, 675 S.W.2d 369 (1984); *3-W Lumber Co. v. Housing Authority of Batesville*, 287 Ark. 70, 696 S.W.2d 725 (1985); *Vermeer Manufacturing Co. v. Vandiver Equipment Co. and Ford Motor Co.*, 279 Ark. 248, 650 S.W.2d 244 (1983). That was not done in this case and the order is not appealable. ARAP Rule 2.

Appeal dismissed without prejudice to an appeal from a final judgment.
