

Bobby A. MORAN and Wilbur Moran, Individually and as
Parents and Next Friends of Chris Moran, A Minor v.
ARKANSAS BLUE CROSS & BLUE SHIELD, INC.

88-24

746 S.W.2d 62

Supreme Court of Arkansas
Opinion delivered March 21, 1988

1. APPEAL & ERROR — NO FINAL APPEALABLE ORDER — APPEAL DISMISSED. — Where appellants' suit consisted of two causes of action and one of their causes of action was dismissed when the trial court granted appellee's motion for partial summary judgment, there was no final appealable order because one of appellants' claims remained to be tried.
2. APPEAL & ERROR — APPEALABILITY IS JURISDICTIONAL — APPELLATE COURT HAD THE RIGHT AND DUTY TO RAISE THE ISSUE ON ITS OWN. — Although the appellee failed to raise the issue of appealability in its brief, the issue of appealability is a jurisdictional one which the appellate court has the right and duty to raise on its own in order to avoid piecemeal appeals.

Appeal from Conway Circuit Court; *Charles H. Eddy*, Judge; dismissed.

Mark S. Cambiano, P.A., for appellants.

Gordon & Gordon, P.A., by: *Allen Gordon*, for appellee.

TOM GLAZE, Justice. This is an appeal from the trial court's granting of the appellee's motion for summary judgment dismissing one of the appellants' causes of action, tort of bad faith, and their claim for punitive damages. We dismiss the appeal because there is no final appealable order.

The appellants' suit against the appellee consisted of two causes of action: (1) breach of contract, and (2) bad faith failure to pay health insurance benefits. In their complaint, appellants prayed for \$52,288.05 in damages for breach of contract plus interest and attorney's fees and \$2,550,000 in punitive damages for the tort of bad faith. The appellee moved for a partial summary judgment on the tort cause of action of bad faith failure to pay a claim. The trial court granted the partial summary judgment, finding that the appellee was a benevolent, nonprofit

corporation and thus immune from tort liability. The trial judge, in dismissing the appellants' tort claim, also dismissed their claim for punitive damages. In the judge's letter to the attorneys, he stated, "this leaves us with the breach of contract claim, which will be tried if not settled."

[1, 2] Because the appellants' claim for breach of contract remains to be tried, there is no final appealable order in this case. *See Ark. R. App. P. 2, see also Sevenprop Associates v. Harrison*, 295 Ark. 35, 746 S.W.2d 51 (1988). Although the appellee failed to raise the issue of appealability in its brief, this court has held that such an issue is a jurisdictional one which we have the right and duty to raise on our own in order to avoid piecemeal appeals. *Id.* Accordingly, appellants' appeal is dismissed.
