

OTTER CREEK MALL and Otter Creek Mall Company
v. QUINN COMPANIES, INC., et al.

88-114

759 S.W.2d 810

Supreme Court of Arkansas
Opinion delivered November 21, 1988

APPEAL & ERROR — APPEAL FROM DISMISSAL OF INTERPLEADER WAS NOT A FINAL ORDER. — Where the appellants injected themselves into an existing lawsuit by filing an interpleader that was not filed as an original, independent action, the order dismissing appellants left other claims and parties remaining in the case, and the dismissal was not a final order.

Appeal from Pulaski Circuit Court, Second Division; *Perry V. Whitmore*, Judge; dismissed.

House, Wallace & Jewell, P.A., for appellant.

Kaplan, Brewer & Miller, P.A., for appellee.

DARRELL HICKMAN, Justice. This is an appeal from a dismissal of the appellants' interpleader action. We hold it is not a final order and dismiss the appeal under ARCP Rule 54(b).

There was an existing lawsuit between the appellee Luke Quinn and two entities called Otter Creek Park and Otter Creek Park Company. The appellants, not parties to that lawsuit, owed Quinn \$37,337.68 on a note.

Proceeding more like intervenors, the appellants filed a motion for interpleader in the existing lawsuit alleging the money was claimed not only by Quinn but by Otter Creek Park.

A special judge signed an *ex parte* order granting the motion. Upon learning of this, Quinn immediately asked that the interpleader be dismissed saying there were no competing claims to the money. The regular trial judge set aside the *ex parte* order and dismissed the appellants from the suit.

[1] The interpleader was not filed as an original, independent action. The appellants injected themselves into an existing lawsuit. As a result the order dismissing them left other claims and parties remaining in the case and was not a final order. ARCP Rule 54(b).

Appeal dismissed.

PURTLE, J., not participating.
