

SEARCY, SHERIFF *v.* COOPER

5-3548

388 S. W. 2d 918

Opinion Delivered April 12, 1965.

APPEAL & ERROR—FINALITY OF DETERMINATION—RULING ON PLEA OF VENUE.—The trial court denied the defendants' plea of venue and gave defendants leave to plead further. HELD: Such was not a final and appealable order.

Appeal from Pulaski Circuit Court, Second Division District, *Guy Amsler*, Judge; appeal dismissed.

Sam Anderson, Wootton, Land & Matthews, for appellant.

Pope, Pratt & Shamburger, By Donald S. Ryan, for appellee.

ED. F. McFADDIN, Associate Justice. This proceeding is against a sheriff for failure to make timely return of an execution. On May 19, 1964, Rebecca Cooper recovered judgment against Frances Soncini in the Pulaski Circuit Court for \$11,000.00; and on May 29, 1964, an execution was issued on the judgment, directed to Duffie Searcy, Sheriff of Garland County. The execution was received by Sheriff Searcy on June 12, 1964, and no return was made thereon within sixty days, as required by law. (Ark. Stat. Ann. § 30-431 [Repl. 1962].) On September 2, 1964, Rebecca Cooper filed in the Pulaski Circuit Court a motion for summary judgment against Sheriff Searcy and the sureties on his official bond, claiming said judgment under the provisions of Ark. Stat. Ann. § 27-207 *et seq.* (Repl. 1962).

The filing of the said motion for judgment brought prompt responses:

(a) On September 14, 1964, Sheriff Searcy filed a pleading objecting to the venue in Pulaski County and claiming he had the right to be sued in Garland County. The Aetna Casualty and Surety Company, as surety on his bond, joined in the motion.

(b) On September 14, 1964, Frances Soncini, the judgment debtor, filed a motion to quash the execution as issued prematurely.

These said matters were heard and, by order dated November 10, 1964, the Pulaski Circuit Court denied both of the motions;¹ and the order concluded with this language:

“ . . . that Duffie Searcy, Sheriff of Garland County, Arkansas, and The Aetna Casualty and Surety Company be and they are hereby granted leave of the Court to plead further.”

On November 17, 1964, there was a notice of appeal by Sheriff Searcy, The Aetna Casualty and Surety Company, and also by Frances Soncini, from the said order of November 10, 1964.

It is instantly apparent that the attempted appeal in this case is from the order entered November 10, 1964, which is not a final and appealable order. *Ark. State Board v. Larsen*, 226 Ark. 536, 291 S.W. 2d 269; *Robberson v. Steele Canning Co.*, 233 Ark. 988, 349 S.W. 2d 814; and *Coffelt v. Gordon*, 238 Ark. 974, 385 S.W. 2d 939. The appeal is dismissed for want of a final order.

¹As to Sheriff Searcy's plea of venue, the Trial Court relied on *Smith v. Drake*, 174 Ark. 715, 297 S.W. 817. See also *Perry County v. Gatlin*, 186 Ark. 116, 52 S.W. 2d 626; and *J. B. Pearson Co. v. Pittman*, 192 Ark. 1062, 95 S.W. 2d 1143. As to The Aetna Casualty and Surety Company, the Trial Court relied on Ark. Stat. Ann. § 29-207 *et seq.* (Repl. 1962). As to Mrs. Soncini's motion, the Trial Court relied on *Jones v. Goodbar*, 60 Ark. 182, 29 S.W. 462.