

Jay STRING d/b/a Quality and Satisfactory Drywall
Finish v. J.K. KAZI d/b/a J/Kazi Construction Company
92-826 846 S.W.2d 649

Supreme Court of Arkansas
Opinion delivered February 8, 1993

APPEAL & ERROR — ORDER APPEALED FROM MUST BE FINAL ORDER. —

The appellate court will not decide the merits of an appeal when the order appealed from is not a final order.

Appeal from White Circuit Court; *Cecil A. Tedder*, Judge; dismissed.

Robert F. Meurer, for appellant.

Zachary P. Muncy, for appellee.

ROBERT H. DUDLEY, Justice. The plaintiff filed this suit on January 22, 1992, and service of process was had on January 27, 1992. On February 19, 1992, the defendant filed an answer and counterclaim that is in the nature of a set-off. On February 21, 1992, the trial court granted a default judgment for the full amount of damages prayed. The defendant moved to have the default judgment set aside, and the plaintiff moved to strike the counterclaim. On April 17, 1992, which was within ninety days of the default judgment, the trial court refused to set aside the default judgment as to liability, but did set it aside as to damages and refused to strike the counterclaim. The defendant seeks to appeal, even though the issue of damages and the counterclaim remain to be tried before there can be a final order.

[1] We have frequently held that we will not decide the merits of an appeal when the order appealed from is not a final order. *Sevenprop Assocs. v. Harrison*, 295 Ark. 5, 746 S.W.2d 51 (1988); *Tapp v. Fowler*, 288 Ark. 70, 702 S.W.2d 17 (1986); *McIlroy Bank and Trust v. Zuber*, 275 Ark. 345, 629 S.W.2d 304 (1982). In each of these cases we stated that in order for a judgment to be appealable, it must dismiss the parties or conclude their rights to the subject matter in controversy.

Appeal dismissed.

HAYS and CORBIN, JJ., dissent.

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