

Wilma LEE, as the Personal Representative of
the Estate of Indianna Barnes *v.* Mark MARTINDALE, M.D.,
Quorum Health Resources, LLC, Saline Med-Peds and
Radiology Associates, P.A.

05-926

213 S.W3d 1

Supreme Court of Arkansas
Opinion delivered September 15, 2005

1. CIVIL PROCEDURE — SUMMARY JUDGMENT THAT IS FINAL AS TO LESS THAN ALL LITIGANTS OR CLAIMS — COMPLIANCE WITH ARK. R. CIV. P. 54(b). — Rule 54 of the Arkansas Rules of Civil Procedure provides that a judgment that is final as to less than all of the litigants or the claims is subject to appeal in accordance with the conditions recited in the rule; summary judgment that does not dispose of all parties and claims and does not include the required certification under Rule 54(b) is not a final appealable order; failure to comply with Rule 54(b) in appealing from summary judgment that does not dispose of all the parties and claims deprives the supreme court of jurisdiction and will be dismissed.
2. APPEAL & ERROR — RECORD TIMELY PRESENTED TO CLERK AFTER PROPER CERTIFICATION — MOTIONS FOR RULE ON CLERK & PETITION FOR WRIT OF CERTIORARI GRANTED. — Where, after obtaining certification under Rule 54(b) for appeal of the summary judgment, the record was timely presented to the clerk of the supreme court, and appellant then filed a notice of appeal, and an amended notice of appeal, both of which were filed within thirty days of the judgment as required under Ark. R. App. P. 4(a), the clerk erred in refusing to lodge the record; thus, appellants motion for rule on clerk was granted and the Supreme Court Clerk was directed to file the record in this case and to set a briefing schedule; the petition for writ of certiorari to complete the record was also granted

Motion for Rule on Clerk, granted; Motion for Writ of Certiorari to Complete Record; granted.

The Boyd Law Firm, for appellant

No response.

PER CURIAM. Wilma Lee, by her attorney, Charles Phillip Boyd, Jr., has filed a motion for rule on the clerk asserting that the clerk erred in refusing to lodge her record on appeal. Lee appeals a motion for summary judgment entered on December 28, 2004. She tendered her record on July 26, 2005.

On April 8, 2005, the circuit court issued a Rule 54(b) certification, and Lee then filed a notice of appeal on May 3, 2005, and an amended notice of appeal on May 6, 2005, both of which were filed within thirty days of the judgment as required under Ark. R. App. P. 4(a). The clerk erred in refusing to lodge the record.

[1] Rule 54 "provides that a judgment which is final as to less than all of the litigants or the claims is subject to appeal in accordance with the conditions recited in the rule." *Haase v. Starnes*, 337 Ark. 193, 195, 987 S.W.2d 704 (1999). Summary judgment that does not dispose of all parties and claims and does not include the required certification under Rule 54(b) is not a final appealable order. *Hodges v. Huckabee*, 333 Ark. 247, 252, 968 S.W.2d 619 (1998). The failure to comply with Rule 54(b) in appealing from summary judgment that does not dispose of all the parties and claims deprives this court of jurisdiction and the appeal will be dismissed. *Ashmore v. PACCAR, Inc.*, 315 Ark. 490, 868 S.W.2d 80 (1994). It was not until Lee obtained the certification under Rule 54(b) that she could appeal the summary judgment. The record was timely presented to the clerk of this Court on July 26, 2005.

[2] We direct the Supreme Court Clerk to file the record in this case and to set a briefing schedule. Motion for rule on clerk granted. Petition for writ of certiorari to complete the record is granted.