

FORD MOTOR CREDIT COMPANY *v.* Ross NESHEIM

84-318

682 S.W.2d 750

Supreme Court of Arkansas
Opinion delivered January 21, 1985

APPEAL & ERROR — NOTICE OF APPEAL DOES NOT TRANSFER CASE TO APPELLATE COURT. — The mere filing of a notice of appeal in the trial court does not transfer the case to the appellate court.

Motion to Dismiss Appeal; denied.

No response.

Joe Tresp, Meredith Wineland, and Boswell, Smith & Clardy, by: *David E. Smith*, for appellee.

Per Curiam. This litigation is pending in the Pulaski Chancery Court, Third Division. On October 26, 1984, the chancellor entered an order granting the plaintiff's motion to certify the case as a class action. On November 26, Ford Motor Credit Company filed a petition in this court, No. 84-290, *Ford Motor Credit Company v. Judith Rogers, Chancellor*, seeking a writ of prohibition to prohibit the chancellor from proceeding with the case as a class action. The petition for prohibition was accompanied by a record of the pleadings and order in the chancery court, including Ford Motor Credit Company's notice of appeal from the October 26 certification order, but not including the testimony at a hearing upon which the order was based. The petition for prohibition is still pending, only the petitioner's brief having been filed.

On December 21 Ross Nesheim and others, self-styled appellees, filed a motion which was numbered by the clerk as 84-318 and captioned *Ford Motor Credit Company, Appellant, v. Ross Nesheim et al., Appellees*. The motion asked (1) that the record in the prohibition case be treated as the record in this appeal, and (2) that the appeal be dismissed for want of a final order in this court.

As Ford Motor Credit Company's response points out, no appeal has been perfected from the October 26 certification order. The mere filing of a notice of appeal in the trial court does not transfer the case to this court. There being no appeal subject to dismissal, and no record in the case, the motion to dismiss the appeal is denied and this case, Number 84-318, is stricken from the docket.

(By inadvertence, the Court handed down a per curiam order on January 14, denying the motion to dismiss the appeal, but no opinion accompanied the order. The present opinion states the Court's position in denying the motion to dismiss the appeal.)
