

Margie Katrina McCORMAC (Lewis) v. Michael Bryan  
McCORMAC

90-43

787 S.W.2d 692

Supreme Court of Arkansas  
Opinion delivered April 30, 1990

APPEAL & ERROR — APPEAL NOT FROM FINAL ORDER. — The appeal of a decision on a counter-claim was dismissed for lack of a final order where there was no decision on the underlying claim.

Appeal from Faulkner Chancery Court; *Andre E. McNeil*, Chancellor; appeal dismissed.

*Phil Stratton*, for appellant.

*Linda P. Collier*, for appellee.

DAVID NEWBERN, Justice. This is an appeal from a court's decision rendered on a counter-claim. Because no decision was made on the underlying claim, we must dismiss the appeal pursuant to Ark. R. Civ. P. 54(b).

The appellant, Margie Katrina McCormac Lewis, and the appellee, Michael Bryan McCormac, were divorced. Mr. McCormac sought to have Mrs. Lewis held in contempt for violation of his right to visit a child born to Mrs. Lewis during their marriage. Mrs. Lewis counter-claimed for a declaratory judgment that Mr. McCormac was not the father of the child and sought cancellation of all previous orders regarding visitation and support.

The chancellor entered an order on Mrs. Lewis's petition to deny Mr. McCormac's paternity. The petition was denied on the ground of *res judicata*. The chancellor wrote that the issue was controlled by the divorce decision in which Mr. McCormac's

paternity of the child was determined.

[1] The record contains no decision on the matter of contempt. This is a case in which there were multiple claims. Rule 54(b) provides that, where there has been a decision of fewer than all claims presented, there is no final decision unless the court has directed “entry of a final judgment as to one or more but fewer than all of the claims . . . only upon an express determination that there is no just reason for delay. . . .” That procedure was not followed. The appeal is dismissed. *Wylie v. Tull*, 295 Ark. 481, 749 S.W.2d 325 (1988); *Tackett v. Robbs*, 293 Ark. 171, 735 S.W.2d 700 (1987).

Appeal dismissed.

---