Cite as 2012 Ark. 93

SUPREME COURT OF ARKANSAS

No. CV-11-671

DEER/MT. JUDEA SCHOOL DISTRICT

APPELLANT

V.

MIKE BEEBE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF ARKANSAS; MARK DARR, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS LIEUTENANT GOVERNOR OF THE STATE OF ARKANSAS; DR. TOM W. KIMBRELL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF EDUCATION FOR THE STATE OF ARKANSAS; DR. NACCAMAN WILLIAMS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE STATE BOARD OF EDUCATION; DR. BEN MAYS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF EDUCATION; SHERRY BURROW, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF EDUCATION; JIM COOPER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF EDUCATION; BRENDA GULLETT, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF EDUCATION; SAMUEL LEDBETTER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A MEMBER

Opinion Delivered March 1, 2012

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[NO. CV-10-6936]
HON. CHRISTOPHER CHARLES PIAZZA, JUDGE

DISMISSED WITHOUT PREJUDICE.

OF THE STATE BOARD OF EDUCATION; ALICE WILLIAMS MAHONEY, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF EDUCATION; TOYCE NEWTON, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF EDUCATION; VICKI SAVIERS, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS A MEMBER OF THE STATE BOARD OF EDUCATION; RICHARD WEISS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION; MAC DODSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY; ROBERT MOORE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE HOUSE OF REPRESENTATIVES; PAUL BOOKOUT, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS PRESIDENT PRO TEMPORE OF THE SENATE

APPELLEES

KAREN R. BAKER, Associate Justice

Appellant Deer/Mt. Judea School District appeals from an order granting a motion to dismiss. This case presents a question regarding the extent to which this court's decision in *Lake View School District No. 25 v. Huckabee*, 370 Ark. 139, 257 S.W.3d 879 (2007), precludes

subsequent claims that the state's education system violates article XIV, section 1 and article II, sections 2, 3, and 18 of the Arkansas Constitution. We must dismiss the appeal because the circuit court's order is not a final, appealable order.

On December 3, 2010, appellant filed an action on its own behalf and on behalf of its students and taxpayers to enjoin State actions in violation of state law and the Arkansas Constitution. In its complaint, appellant alleged that the State failed to conduct adequacy studies in compliance with Arkansas Code Annotated section 10-3-2102 ("Act 57") in 2008 and 2010, and to make necessary adjustments to maintain an education system in compliance with article XIV, section 1 and article II, sections 2, 3, and 18 of the Arkansas Constitution ("Claim 1"). Appellant also stated a claim that section 32 of Act 293 of 2010 is local or special legislation in violation of Amendment 14 to the Arkansas Constitution for the benefit of the Melbourne School District ("Claim 2"). The State filed a motion to dismiss the complaint on January 28, 2011. On March 17, 2011, the circuit court held a hearing on the motion to dismiss. At the hearing, the circuit judge stated from the bench that he would grant appellees' motion to dismiss appellant's claims based on the doctrine of res judicata.

On April 11, 2011, appellant filed a motion for voluntary dismissal without prejudice as to Claim 2. The motion expressly states: "To facilitate an immediate appeal upon entry of an order granting Defendants' motion to dismiss Deer/Mt. Judea's education system claims [Claim 1], Deer/Mt. Judea moves for entry of an order dismissing its Amendment 14 claim [Claim 2] without prejudice pursuant to Ark. R. Civ. P. 41(a)." The circuit court entered an order on April 11, 2011, granting appellant's motion dismissing Claim 2 without prejudice. On April 12, 2011, the circuit court entered its order dismissing appellant's claims against all

appellees. Appellant filed a timely notice of appeal on April 14, 2011.

Although the parties do not raise this issue, we must first address whether the order from which appellant appeals is a final, appealable order. Because finality presents a jurisdictional issue, we will consider the issue even if the parties do not raise it. *Haile v. Ark. Power & Light Co.*, 322 Ark. 29, 907 S.W.2d 122 (1995). This court will not allow plaintiffs to voluntarily dismiss claims against the same defendant without prejudice in order to convert an adverse partial-summary judgment into a final, appealable order. *Ratzlaff v. Franz Foods of Ark.*, 255 Ark. 373, 500 S.W.2d 379 (1973); *see also Crockett v. C.A.G. Invs., Inc.*, 2010 Ark. 90, 361 S.W.3d 262.

Rule 2 of the Arkansas Rules of Appellate Procedure–Civil requires that a judgment or decree be final in order to take an appeal with certain enumerated exceptions. Without a certificate from the circuit court directing that the order or decree is final, "any judgment, order, or other form of decision, however designated, which adjudicates fewer than all the claims or rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties." Ark. R. Civ. P. 54(b)(2) (2011); *see also Bevans v. Deutsche Bank Nat'l Trust Co.*, 373 Ark. 105, 281 S.W.3d 740 (2008). Rule 54(b) of the Arkansas Rules of Civil Procedure permits an appeal from an order that disposes of some of the claims or parties. We have set forth the rationale and requirements for compliance with Rule 54(b) as follows:

> The Rule, which applies only when there are multiple claims or multiple parties, requires two things: First, the trial court must direct the entry of a final judgment as to one or more but fewer than all of the claims or parties. Whether the judgment is in fact final is apparently to be determined under Ark. R. App. P.–2. Second, the trial court must make an express determination that there is no just reason for delay, which has been construed to mean that there must be some danger of hardship or injustice which would be alleviated by an immediate appeal. Should there be any uncertainty about the trial court's

> intent, clarification may be sought during the 30 days allowed for the notice of appeal. Fundamentally, however, the policy of the rules is still to avoid piecemeal appeals, so that the discretionary power vested in the trial court is to be exercised infrequently, in harsh cases. Here the discretionary power was not exercised, for the judgment that we are asked to review does not satisfy either of the two requirements essential to its appealability.

Tulio v. Ark. Blue Cross & Blue Shield, Inc., 283 Ark. 278, 280–81, 675 S.W.2d 369, 371 (1984).

In *Ratzlaff*, we interpreted whether the plaintiffs' voluntary dismissal of claims upon which the trial court had not granted summary judgment circumvented the policy behind the predecessor to Rule 2 by holding two counts in abeyance pending the appeal regarding the validity of the third count. *Ratzlaff*, 255 Ark. at 374–75, 500 S.W.2d at 379–80. We concluded that permitting the appeal would violate our longstanding policy of disallowing piecemeal appeals and dismissed the appeal without prejudice. *Id.*; *see also Advanced Env't Recycling Tech., Inc. v. Advanced Control Solutions, Inc.*, 372 Ark. 286, 275 S.W.3d 162 (2008); *Crockett v. C.A.G. Invs., Inc.*, 2010 Ark. 90, at 7, 361 S.W.3d 262 (stating that a plaintiff cannot convert a partial summary judgment into a final, appealable order by taking a voluntary nonsuit, leaving "a dangling issue that has yet to be decided").

Here, after the March 17, 2011 hearing at which the circuit court granted appellees' motion to dismiss, appellant filed a motion to voluntarily dismiss Claim 2 without prejudice. In its motion, appellant specifically stated that it was seeking a nonsuit as to Claim 2 in order to expedite the appeal of the circuit court's order with respect to Claim 1. The claims involved identical parties. The circuit court granted the motion to dismiss Claim 2. The nonsuit of Claim 2 did not operate to make the April 12, 2011 order final because Claim 2 can be refiled.

Further, there is no Rule 54(b) certificate in the record, and it is clear from the record that the requirements of Rule 54(b) have not been met. Appellant's April 11, 2011 motion to dismiss Claim 2 illustrates that appellant sought to create a situation that would potentially give rise to piecemeal appeals, which is in direct contravention of our policies and the rules implemented to further these policies. Based on our precedent, the appeal must be dismissed without prejudice for lack of a final order.

Dismissed without prejudice.