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SUPREME COURT OF ARKANSAS

No. 11-1057

J.B. ROBINSON, K.S. ROBINSON, E.M. BOZOVSKY AND R.A. KELLEY (INDIVIDUALLY, AND AS REPRESENTATIVES OF A SIMILARLY SITUATED CLASS OF TAXPAYERS OWNING REAL AND PERSONAL PROPERTY WITHIN THE BOUNDARIES OF THE CITY OF LITTLE ROCK, ARKANSAS, ALL OF WHOM ARE REQUIRED TO PAY AD VALOREM TAXES THAT SUPPORT THE CENTRAL ARKANSAS LIBRARY SYSTEM)

APPELLANTS

V.

FLOYD G. "BUDDY" VILLINES (IN HIS OFFICIAL CAPACITY AS THE DULY ELECTED COUNTY JUDGE OF PULASKI COUNTY, ARKANSAS); JANET TROUTMAN WARD (IN HER OFFICIAL CAPACITY AS THE ELECTED TAX ASSESSOR OF PULASKI COUNTY, ARKANSAS); DEBRA BUCKNER (IN HER OFFICIAL CAPACITY AS THE ELECTED TREASURER OF PULASKI COUNTY, ARKANSAS); PULASKI COUNTY, ARKANSAS (AS AN ENTITY); MARK STODOLA (IN HIS OFFICIAL CAPACITY AS THE ELECTED MAYOR OF THE CITY OF LITTLE ROCK, ARKANSAS); THE CITY OF LITTLE ROCK, ARKANSAS (AS AN ENTITY); BOBBY L. ROBERTS (IN HIS OFFICIAL CAPACITY AS THE DULY APPOINTED AND SERVING DIRECTOR OF THE CENTRAL ARKANSAS LIBRARY SYSTEM); AND THE CENTRAL

Opinion Delivered MAY 17, 2012

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SIXTH DIVISION, [NO. CV 08-5203]

HON. TIMOTHY DAVIS FOX, JUDGE

APPEAL DISMISSED WITHOUT PREJUDICE.

ARKANSAS LIBRARY SYSTEM (AS AN ENTITY)

APPELLEES

DONALD L. CORBIN, Associate Justice

The taxpayer class appeals the order of the Pulaski County Circuit Court entered after this case was remanded in *Robinson v. Villines*, 2009 Ark. 632, ___ S.W.3d ___, for the circuit court to ascertain a remedy consistent with our decision that the taxpayers had proved a valid claim for illegal exaction of increased ad valorem "library" taxes for the 2007 ad valorem tax year. As this is a second appeal, our jurisdiction is pursuant to Ark. Sup. Ct. R. 1-2(a)(7) (2011). For their sole point for reversal, the taxpayers contend that the circuit court erred in applying the voluntary-payment rule to class members who paid the tax in question prior to the date the complaint for illegal exaction was filed on May 14, 2008. Because the order appealed is not a final order and does not contain specific factual findings of any danger of hardship or injustice that could be alleviated by an immediate appeal, we must dismiss this appeal without prejudice.

The question of whether an order is final and subject to appeal is a jurisdictional question that this court will raise sua sponte. *Kowalski v. Rose Drugs of Dardanelle, Inc.*, 2009 Ark. 524, 357 S.W.3d 432. The requirement of a final judgment is the cornerstone of appellate jurisdiction, and this court reviews only final orders. Ark. R. App. P.–Civ. 2(a). *Bayird v. Floyd*, 2009 Ark. 455, 344 S.W.3d 80. For an order to be final and appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their

rights to the subject matter in controversy. *Id.* Stated another way, for an order to be final and appealable, the order must put the judge's directive into execution, ending the litigation, or a separable branch of it. *City of Corning v. Cochran*, 350 Ark. 12, 84 S.W.3d 439 (2002). By contrast, an order that contemplates further action by a party or the court is not a final, appealable order. *Blackman v. Glidewell*, 2011 Ark. 23. "Even though the issue decided might be an important one, an appeal will be premature if the decision does not, from a practical standpoint, conclude the merits of the case." *Id.* at 3–4.

We recently held in *Blackman* that a circuit court's order that continued to oversee the process of retaxing the funds in an illegal-exaction case was not a final, appealable order because it contemplated further action before the parties would be discharged, such as ascertaining the amount of the judgment, identifying the class members, and issuing refunds. In so holding, we relied on *Fisher v. Chavers*, 351 Ark. 318, 92 S.W.3d 30 (2002), a case in which we held that an order encompassing a circuit court's plan of distribution in an illegal-exaction case was not a final, appealable order because it contemplated further action, such as issuing refunds and related matters, and did not discharge the parties from the case.

Similar to the orders at issue in *Blackman* and *Chavers*, the order in the present illegal-exaction case is not a final, appealable order because it contemplates further action by the parties and the circuit court. While the order does define the class and set the notice requirements, it does not set the date that notice is to be given to class members. Moreover, the order expressly reserves for future determination such issues as the time frame for class members to submit their claims for refund, the details concerning the time and methodology

for issuing refunds, and the determination of attorney's fees. Clearly, as was the case in *Blackman* and *Chavers*, the order in the present case contemplates further action, and it is therefore not a final order.

Although the purpose of requiring a final order is to avoid piecemeal litigation, a circuit court may certify an otherwise nonfinal order for an immediate appeal by executing a certificate pursuant to Rule 54(b) of the Arkansas Rules of Civil Procedure. *Blackman*, 2011 Ark. 23. Recognizing this court's previous dismissals in illegal-exaction appeals on lack of finality grounds, the taxpayers in the present case moved for a Rule 54(b) certificate. However, the certificate executed by the circuit court in this case is insufficient to accomplish its intended purpose.

Rule 54(b) provides in part that, when multiple parties or multiple claims are involved in a case, the trial court may direct the entry of final judgment "only upon an express determination, supported by specific factual findings, that there is no just reason for delay and upon an express direction for the entry of judgment." If the court makes such a determination, it must execute a certificate "which shall appear immediately after the court's signature on the judgment, and which shall set forth the factual findings upon which the determination to enter the judgment as final is based." Ark. R. Civ. P. 54(b)(1) (2011).

In response to the taxpayers' motion for a Rule 54(b) certificate, the circuit court issued the following order, which reads in its entirety:

ORDER GRANTING MOTION FOR CERTIFICATION OF JUDGMENT

The representative Plaintiffs and their counsel having filed a Motion for Certification of Judgment in this Circuit Court on August 18, 2011, and this Circuit Court having found that such Motion is well taken, it is hereby,

ORDERED that the part of the Order entered herein on June 29, 2011, as to the matters discussed and the holdings set forth in Paragraph 1, Sentence 2 of that Order, the following finding and holding of this Circuit Court is certified as a "Final Judgment" as to that issue and that there is no just reason for delay of the entry of this "Final Judgment." Therefore, it is further,

ORDERED that the Court finds and holds, with regard to the eligibility of any taxpayer owning real or personal property within the city limits of Little Rock, which was subject to ad valorem taxation during the 2007 ad valorem tax year, whose ad valorem taxes were paid during the 2008 calendar year, that such taxpayer is "deemed to have voluntarily paid the tax and are ineligible for a refund," if such taxes were paid prior to May 14, 2008, the date of the filing of the Complaint in this civil action.

ENTERED this 29th day of August, 2011.

/s/ TIMOTHY DAVIS FOX
Circuit Judge

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment, the court finds:

Taxpayers paying the subject tax prior to the filing of the Complaint are deemed to have voluntarily paid the tax and are ineligible for a refund.

Upon the basis of the foregoing factual findings, the court hereby certifies, in accordance with Rule 54(b)(1), Ark. R. Civ. P., that it has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the judgment shall be a final judgment for all purposes.

Certified this 29th day of August, 2011.

/s/ TIMOTHY DAVIS FOX
Circuit Judge

The foregoing certificate does not appear after the court's signature on the judgment, as specifically required by Rule 54(b), but is contained in a separate "Order Granting Motion for Certification of Judgment." We need not decide whether this method of issuing a certificate satisfies the requirement of Rule 54(b), however, because the certificate is completely void of specific factual findings as to why an immediate appeal should proceed at this point. Stated another way, the certificate "does not include specific findings of any danger of hardship or injustice that could be alleviated by an immediate appeal, nor does it detail facts that establish such a hardship or injustice." *Kowalski*, 2009 Ark. 524, at 3–4, 357 S.W.3d 432, 434. Although the order does refer to the specific factual finding in the court's previous order, that finding relates to the merits of the court's decision to apply the voluntary-payment rule and not to the reasons for the entry of a final judgment authorizing an immediate appeal of only part of this case.

We are aware that the taxpayers' addendum and the record itself demonstrate that the need for Rule 54(b) certification was agreed to by the parties and communicated to the circuit court. However, our case law makes clear that such discussions or communications on the record alone are insufficient to cure a defective certification, as factual underpinnings supporting a Rule 54(b) certification must be set out in the circuit court's order. *Kowalski*, 2009 Ark. 524, 357 S.W.3d 432. This court has stressed that it adheres to a policy against piecemeal appeals and that the discretionary power of the trial court to direct finality is to be

exercised infrequently and only in harsh cases. *Murry v. State Farm Mut. Auto. Ins. Co.*, 291 Ark. 445, 725 S.W.2d 571 (1987).

In conclusion, because the order being appealed contemplates further action in this case, it is not final. In addition, because the instant Rule 54(b) certificate does not include specific findings of any danger of hardship or injustice that could be alleviated by an immediate appeal, and does not detail facts that establish such a hardship or injustice is likely, it does not satisfy the requirements of Rule 54(b). We therefore lack jurisdiction of this appeal and must dismiss it without prejudice.

Appeal dismissed without prejudice.