

SUPREME COURT OF ARKANSAS

No. CV-11-612

FORD MOTOR COMPANY
APPELLANT

V.

PAULETTE R. WASHINGTON
APPELLEE

Opinion Delivered September 27, 2012

SUPPLEMENTAL OPINION
ISSUED ON DENIAL OF
PETITION FOR REHEARING.

JIM HANNAH, Chief Justice

Ford and Washington jointly petitioned this court for rehearing following this court's dismissal of Ford's appeal without prejudice due to a lack of a final order. Petitioners contend that, pursuant to Arkansas Rule of Appellate Procedure—Civil 3, the order in the appeal was final because they abandoned any pending but unresolved claim in their notices of appeal and cross-appeal. We deny the petition.

In 2010, this court issued an amendment to Rule 3 to require a new statement in every notice of appeal and notice of cross-appeal from a final order or judgment. The amended rule provides that a notice of appeal or cross-appeal shall

state that the appealing party abandons any pending but unresolved *claim*. This abandonment shall operate as a dismissal with prejudice effective on the date that the otherwise final order or judgment appealed from was entered.

Ark. R. App. P.—Civ. 3(e)(vi) (2012) (emphasis added).

The Addition to the Reporter's Notes, 2010 Amendment, explains:

This abandonment operates as a dismissal with prejudice of these stray *claims*.

This amendment will cure a recurring finality problem. Too often—after the parties have paid for the record, filed it, and filed all their briefs on appeal—the appellate court will discover that what appears to be a final order or judgment is not final because a

pleaded claim, counterclaim, or cross-claim remains adjudicated. This kind of stray *claim* destroys finality and renders an otherwise final order or judgment unappealable. *E.g.*, *Ramsey v. Beverly Enters., Inc.*, 375 Ark. 424, 291 S.W.3d 185 (2009); *Rigsby v. Rigsby*, 340 Ark. 544, 11 S.W.3d 551 (2000); *Brasfield v. Murray*, 96 Ark. App. 207, 239 S.W.3d 551 (2006). These stray *claims* often appear to have been forgotten by the parties or abandoned even though no order resolved them. It wastes parties' and courts' scarce resources to have two appeals in these situations.

(Emphasis added.)

The Rule concerns abandoning a pending but unresolved claim. Similarly, the illustrative cases cited in the Addition to Reporter's Notes concerned pending but unresolved claims. The Rule does not, however, allow an appealing party to dismiss a party from the action by such a statement in a notice of appeal or notice of cross-appeal.

Petitioners cite this court to *Searcy County Counsel for Ethical Government v. Hinchey*, 2011 Ark. 533, at 5, where we noted that an appellant failed to include a statement in its notice of appeal that it was abandoning any pending claim, "which would have operated as a dismissal with prejudice of its claim against" one of the defendants. That statement in *Hinchey* was merely dicta. We wish to make clear that Rule 3 requires appellants and cross-appellants to abandon pending and unresolved claims, but it does not permit appellants and cross-appellants to dispose of parties in the same fashion. In this case, the voluntary nonsuit is effective only upon entry of court order dismissing the action. Ark. R. Civ. P. 41(a) (2011).

Wright, Lindsey & Jennings LLP, by: *Edwin L. Lowther, Jr., Paul D. Morris, and Gary D. Marts, Jr.*, for appellant.

The Duncan Firm, by: *Phillip J. Duncan; Denney & Barrett, P.C.*, by: *Richard L. Denney* and *Lydia JoAnn Barrett*; and *Brian G. Brooks, Attorney at Law, PLLC*, by: *Brian G. Brooks*, for appellee.