

SUPREME COURT OF ARKANSAS

No. 12-363

NEWTON W. DORSETT

APPELLANT

V.

DONALD BUFFINGTON

APPELLEE

Opinion Delivered January 24, 2013APPEAL FROM THE LAFAYETTE
COUNTY CIRCUIT COURT
[NO. CV-2009-118-2]HONORABLE BRENT HALTOM,
JUDGEDISMISSED WITHOUT PREJUDICE.**DONALD L. CORBIN, Associate Justice**

Appellant Newton W. Dorsett appeals an order of the Lafayette County Circuit Court awarding damages, attorneys' fees, and prejudgment interest to Appellee Donald Buffington. On appeal, Dorsett argues that (1) Buffington's action against Dorsett was barred by the doctrine of res judicata, (2) the award of damages is contrary to the law, (3) Buffington failed to prove conversion as a matter of law, and (4) the award of prejudgment interest was in error. Because we conclude that there is no final order before us, we must dismiss the instant appeal without prejudice.

Buffington and Dorsett, along with Richard Williamson and Diamond Transport & Drilling, LLC, were owners of an oil-drilling rig. After disputes arose among the owners, several legal proceedings were instituted in state and federal courts in Arkansas and Louisiana. As a result of this litigation, the parties entered into a Compromise Agreement on or about January 22, 2008. The present action stems from a complaint filed by Buffington against

Diamond Transport and Dorsett, alleging breach of contract, conversion, and fraud in connection with the Compromise Agreement. The Compromise Agreement mandated that the rig be sold as soon as possible and that Diamond Transport continue to operate the rig and to keep it in good operating condition until it sold. Buffington brought the instant suit as a result of what he claims was Diamond Transport and Dorsett's failure to adhere to the Compromise Agreement. Dorsett filed a third-party complaint against Williamson, who was originally a party to the Compromise Agreement. Williamson, though, had assigned his interest in the rig to Buffington for no cash consideration.

The case was tried before a jury on October 11–13, 2011. Prior to opening statements, Dorsett moved to dismiss his third-party complaint against Williamson. The circuit court orally granted the motion. During trial, the circuit court directed a verdict on the fraud claim. The only claim submitted to the jury, as to Diamond Transport, was the claim for conversion, which the jury found in Buffington's favor but awarded no damages. The jury also found in Buffington's favor as to the contract claim against Dorsett and awarded damages of \$335,000. The circuit court subsequently entered a final order on the jury award and also ordered Dorsett to pay attorneys' fees of \$99,630 and prejudgment interest, at a rate of ten percent, in the amount of \$100,591.77. Following the disposition of posttrial motions, Dorsett filed a timely appeal with this court.

The finality problem we have with this case stems from the fact that the circuit court orally granted the motion to dismiss but never filed a written order dismissing Williamson from the case, as required by Ark. R. Civ. P. 41(a) (2012). Because there is no order

dismissing Williamson from this case, there is no final judgment as required by Ark. R. Civ. P. 54(b) (2012).

This court recently addressed a similar situation in *Ford Motor Co. v. Washington*, 2012 Ark. 325. There, this court held as follows:

Under Rule 54(b), an order that fails to adjudicate all of the claims as to all of the parties, whether presented as claims, counterclaims, cross-claims, or third-party claims, is not final for purposes of appeal. *E.g., Harrill & Sutter, PLLC v. Farrar*, 2011 Ark. 181. Although Rule 54(b) provides a method by which the circuit court may direct entry of a final judgment as to fewer than all of the claims or parties, where there is no attempt to comply with Rule 54(b), the order is not final, and we must dismiss the appeal. *Id.* The failure to comply with the provisions of Rule 54(b) affects the subject-matter jurisdiction of this court. *Id.* Thus, this court is obligated to raise the issue on its own. *Id.*

Id. at 2–3. This court dismissed the appeal in *Washington* without prejudice because the failure to comply with Rule 54(b) deprived the court of jurisdiction. *Id.*

As was the case in *Washington*, we lack a final judgment in this case, and the dictates of Rule 54(b) are not satisfied; thus, this court is deprived of jurisdiction. Accordingly, we dismiss the instant appeal without prejudice.

Dismissed without prejudice.

Ned A. Stewart, Jr.; and *Williams & Anderson PLC*, by: *Jess Askew III* and *Jamie K. Fugitt*,
for appellant.

Mercy Carter Tidwell, L.L.P., by: *W. David Carter*, for appellee.