

SUPREME COURT OF ARKANSAS

No. 10-116

BEVERLY ENTERPRISES, INC.,
BEVERLY HEALTH AND
REHABILITATION SERVICES, INC.,
BEVERLY ENTERPRISES - ARKANSAS,
INC. d/b/a BEVERLY HEALTHCARE -
CAMDEN

APPELLANTS

VS.

VALERIE KEATON, INDIVIDUALLY,
AND AS ADMINISTRATRIX OF THE
ESTATE OF HERMAN JOHNSON,
DECEASED, AND ON BEHALF OF THE
WRONGFUL DEATH BENEFICIARIES
OF HERMAN B. JOHNSON

APPELLEES

Opinion Delivered January 20, 2011

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT,
NO. CV05-282-6,
HON. DAVID FREDERIC GUTHRIE,
JUDGE,

APPEAL DISMISSED.

JIM HANNAH, Chief Justice

Beverly Enterprises, Inc., Beverly Health and Rehabilitation Services, Inc., and Beverly Enterprises–Arkansas, Inc. d/b/a Beverly Healthcare–Camden (Beverly) appeal from a judgment entered by the Ouachita County Circuit Court on November 2, 2007. A previous appeal from this judgment was dismissed without prejudice because the judgment did not adjudicate or dismiss all the defendants or claims. *See Beverly Enters., Inc. v. Keaton*, 2009 Ark. 431. Upon remand, Beverly obtained an order from the Ouachita County Circuit Court dismissing “with prejudice all of the Plaintiff’s claims against the Defendants save and except

Cite as 2011 Ark. 7

for the Beverly Defendants.” Therefore, there are still claims pending against Beverly that have not been adjudicated or dismissed. *See Beverly*, 2009 Ark. 431, at 5.

Under Arkansas Rule of Civil Procedure 54(b)(1) & (2), a judgment is not final that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties. *Schubert v. Target Stores, Inc.*, 2009 Ark. 89, at 3, 302 S.W.3d 33, 35. An appeal may only be taken from a final judgment or decree entered by a trial court. Ark. R. App. P.–Civ. 2(a)(1) (2010). Whether a judgment is final and subject to appeal is a jurisdictional question that this court will address sua sponte. *Schubert*, 2009 Ark. 89, at 3, 302 S.W.3d at 34. The remaining claims against Beverly must be properly adjudicated or dismissed before this court acquires jurisdiction to hear the appeal. *See Beverly*, 2009 Ark. 431, at 5.

Appeal dismissed without prejudice.

Special Justice DONALD P. RANEY joins.

HENRY, J., not participating.