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SUPREME COURT OF ARKANSAS

No. CV-09-1186

CARROLL W. SMITH AND LORENE R. SMITH		Opinion Delivered January 21, 2010
	APPELLANTS	APPEAL FROM THE WHITE COUNTY CIRCUIT COURT [NO. CV08-03]
V.		
ARKANSAS MIDSTREAM GAS SERVICES CORPORATION		HON. TOM HUGHES, JUDGE
	APPELLEE	<u>REMANDED.</u>

PER CURIAM

Appellants Carroll W. Smith and Lorene R. Smith appeal the July 1, 2009 order of the White County Circuit Court finding that Appellee Arkansas Midstream Gas Services Corporation possessed the power of eminent domain to condemn and take a permanent easement and a temporary construction easement over Appellants' land for purposes of constructing and maintaining a natural gas pipeline. The order entered on July 1, 2009, includes a certification purported to comply with the requirements of Arkansas Rule of Civil Procedure 54(b)(1), stating in pertinent part as follows:

Upon the basis of the factual findings in the Order filed on November 7, 2008, and herein, the Court concludes that A.C.A. § 23-15-101 (Repl. 2002) and A.C.A. § 18-15-1303 (Repl. 2003) are constitutional and that Plaintiff Arkansas Midstream Gas Services Corp. has the power of eminent domain and certifies, in accordance with Rule 54(b)(1) of the Arkansas Rules of Civil Procedure that it has determined that there is no just reason for delay of the entry of a final judgment as to the issues of the constitutionality of A.C.A. § 23-15-101 (Repl. 2002) and A.C.A. § 18-15-1303 (Repl. 2003) and that Plaintiff Arkansas Midstream Gas Services Corp. has the power of eminent domain and that the Court has and does direct that the judgment as to those issues shall be a final judgment for all purposes.

This certificate fails to comply with the requirements of Rule 54(b)(1) because it fails

to set forth the factual underpinnings as to why a hardship or injustice would result if an immediate appeal is not permitted. See *Ralph Loyd Martin Revocable Trust v. Ark. Midstream Servs. Corp.*, 2009 Ark. 563; *Kowalski v. Rose Drugs of Dardanelle, Inc.*, 2009 Ark. 524, 357 S.W.3d 432; *Howard v. Dallas Morning News, Inc.*, 324 Ark. 91, 918 S.W.2d 178 (1996). Due to the noncompliance with Rule 54(b)(1), we lack jurisdiction to entertain the appeal at this juncture. See *McKinney v. Bishop*, 369 Ark. 191, 252 S.W.3d 123 (2007). Accordingly, we remand the case to the circuit court for compliance with Rule 54(b)(1).

Remanded.