

SUPREME COURT OF ARKANSAS

No. 10-352

DAVID BOLEN and MARIAN BOLEN,
JIM BLAKELY and FRANCES
BLAKELY, DIANA GALLAGHER,
ROMA GRAY, LEON GREGORY and
HELEN GREGORY, DON JOHNSON
and DEBBIE JOHNSON, MICHAEL
LUNA, and LANNY SAMPLES
APPELLANTS

V.

WASHINGTON COUNTY ZONING
BOARD OF ADJUSTMENTS, a/k/a
WASHINGTON COUNTY PLANNING
BOARD; WASHINGTON COUNTY
QUORUM COURT; and BIG RED
DIRT FARM, LLC
APPELLEES

Opinion Delivered April 15, 2010

MOTION FOR RULE ON CLERK

GRANTED.

PER CURIAM

Appellants David and Marian Bolen and others, by and through their attorney, James E. Crouch, have filed a motion for rule on clerk. Appellants initially appealed a decision by the Washington County Quorum Court to the Washington County Circuit Court; the Quorum Court's decision approved a conditional-use permit that would allow Appellee Big Red Dirt Farm, LLC, to operate a rock quarry in close proximity to Appellants' residences.



Cite as 2010 Ark. 179

The Washington County Circuit Court entered an order on September 3, 2009, setting the case for jury trial at the request of Appellants and over the objections of Appellees.

On October 22, 2009, this court handed down its opinion in *PH, LLC v. City of Conway*, 2009 Ark. 504, 344 S.W.3d 660. In that case, we held that Arkansas Code Annotated section 14-56-425 (Repl. 1998), which affords a right to a de novo trial, including the right to a jury trial, from final actions taken by administrative and quasi-judicial agencies, does not apply to zoning decisions.

On the heels of that decision, on October 27, 2009, Appellees in the instant case filed a motion for reconsideration of the trial court's September 3 order granting Appellants' request for a jury trial. The circuit court heard arguments on the motion for reconsideration on November 30, 2009, and ruled from the bench that Appellants were not entitled to a jury trial. The court entered an order to that effect on December 18, 2009, granting Appellees' motion for reconsideration and certifying the order as a final order pursuant to Arkansas Rule of Civil Procedure 54(b). Appellants timely sought reconsideration of that order, and the trial court denied their motion in an order entered on January 6, 2010.

Appellants filed their notice of appeal on January 12, 2010, and attempted to lodge the record with this court on March 29, 2010. Our clerk's office refused to accept the record, however, on the basis that the October 22, 2009 motion for reconsideration had not been filed within ten days of the September 3, 2009 order granting Appellants' request for a jury



Cite as 2010 Ark. 179

trial in accordance with Arkansas Rule of Civil Procedure 52(b). Appellants filed the present motion for rule on clerk on April 5, 2010, and we hereby grant it.

Rule 52(b) provides that “[u]pon motion of a party made not later than 10 days after *entry of judgment*, the court may amend its findings of fact previously made or make additional findings and may amend the judgment accordingly.” (Emphasis added.) By its terms, the rule applies to *judgments*. The September 3, 2009 order in this case was not a judgment, but a scheduling order setting the case for a jury trial; therefore, the ten-day time period set out in Rule 52(b) was not applicable. Appellants’ notice of appeal and attempted tender of the record were in all respects timely from the date of the order that the trial court certified as final under Rule 54(b), and we grant Appellants’ motion for rule on clerk and direct the clerk to accept the record in this appeal.

James E. Crouch, for appellants.

No response.