

Cite as 2022 Ark. 74

SUPREME COURT OF ARKANSAS

No. CV-21-458

Opinion Delivered: April 7, 2022

ROBERT STEINBUCH
APPELLANT

V.

UNIVERSITY OF ARKANSAS A/K/A
UNIVERSITY OF ARKANSAS--
LITTLE ROCK; THE TRUSTEES OF
THE UNIVERSITY OF ARKANSAS;
MICHAEL SCHWARTZ, IN HIS
OFFICIAL AND PERSONAL
CAPACITY; THERESA BEINER, IN
HER OFFICIAL AND PERSONAL
CAPACITY; JOANN MAXEY, IN HER
OFFICIAL CAPACITY; JOHN M.A.
DIPIPPA, IN HIS OFFICIAL
CAPACITY; AND VELMER
BURTON, IN HIS OFFICIAL
CAPACITY

APPELLEES

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, SIXTH
DIVISION

[NO. 60CV-15-5690]

HONORABLE TIMOTHY DAVIS
FOX, JUDGE

AFFIRMED IN PART; DISMISSED IN
PART.

COURTNEY RAE HUDSON, Associate Justice

Appellant, Robert Steinbuch, appeals the Pulaski County Circuit Court's orders denying his motion for an order to waive record fees and his motion to be determined the prevailing party in a Freedom of Information Act lawsuit. For reversal, Steinbuch argues that the circuit court erred by failing to hold a hearing and make specific findings with respect to both motions. We affirm in part and dismiss in part.

Steinbuch is a law professor at the University of Arkansas at Little Rock's William H. Bowen School of Law. This case, in essence, involves two distinct appeals. One is an appeal related to Steinbuch's efforts to be declared a "prevailing party" in his FOIA action against the University of Arkansas. The second is his appeal of an order denying his motion to waive record fees and involves Steinbuch's dispute with Terry Hollingsworth, who is the Pulaski County Circuit Clerk and a third-party defendant below. Hollingsworth is the only appellee involved with the record-fees appeal. The FOIA appellees are the University of Arkansas, a/k/a University of Arkansas—Little Rock; the Trustees of the University of Arkansas; Michael Schwartz, in his official and personal capacity; Theresa Beiner, in her official and personal capacity; JoAnn Maxey, in her official capacity; John M.A. DiPippa, in his official capacity; and Velmer Burton, in his official capacity (the University).

The events leading to this appeal began in 2015, when, pursuant to Arkansas Code Annotated section 25-19-101 et seq. (Repl. 2014 & Supp. 2021), Steinbuch submitted a FOIA request to the University. Steinbuch requested a spreadsheet that included the name, law school admission test score, law school and undergraduate grade point averages, race, sex, full- or part-time status, residency, graduation month and bar-passage information for every student over a ten-year period. The University claimed that a release of unredacted documents would violate students' privacy rights and instead provided a redacted version of the spreadsheet that Steinbuch requested. Dissatisfied, Steinbuch filed a November 17, 2015 complaint in the Pulaski County Circuit Court alleging FOIA violations by the University and by Schwartz in his official capacity as the then dean of the law school. Steinbuch sought

an unredacted copy of the spreadsheet. He went on to file six amended complaints that added other claims and defendants.

On May 14, 2018, the circuit court dismissed the FOIA claim with prejudice because the parties had negotiated a settlement as to that claim. In that order, the circuit court found in relevant part that

[t]he Court expresses no view on whether Plaintiff should recover attorneys' fees under FOIA. Resolution of that issue properly rests with the State Claims Commission under Ark. Code Ann. § 25-19-107(e), Ark. Code Ann. § 19-10-204(d), and Article V, § 20, of the Arkansas Constitution. Nothing in this order is intended to operate as a bar to Plaintiff's ability to file a claim for attorneys' fees in the Claims Commission or Defendant's ability to contest such a claim.

The circuit court dismissed Steinbuch's remaining claims with prejudice on August 6, 2018. Steinbuch appealed the circuit court's dismissal of his action, and the University filed a cross-appeal. We affirmed on direct appeal and dismissed on cross-appeal. *Steinbuch v. Univ. of Ark.*, 2019 Ark. 356, 589 S.W.3d 350. Our opinion did not address Steinbuch's entitlement to attorney's fees or the question of whether he was a prevailing party in his FOIA claim. We denied Steinbuch's petition for rehearing, and our mandate issued on January 23, 2020.

While his appeal was progressing, Steinbuch returned to the circuit court. On January 2, 2020, Steinbuch filed a postjudgment motion in the circuit court, which sought the vacatur of the May 2018 order and a citation for contempt. He argued that the University had committed fraud in connection with a claim for attorney's fees that his attorney, Chris Corbitt, had filed with the Arkansas Claims Commission on behalf of the Corbitt Law Firm and asserted that the circuit court's judgment should be vacated or modified pursuant to

Arkansas Rule of Civil Procedure 60(c)(4). Alternatively, Steinbuch requested that the circuit court find, for purposes of referral back to the Claims Commission, that the issues of “substantially prevailing” and “substantially justification [sic]” were resolved in his favor.¹ The University argued that the time to file a Rule 60 petition had expired, that there was no fraud, and that Steinbuch did not “substantially prevail.” The circuit court denied “all parts” of Steinbuch’s motion on February 18, 2020. Steinbuch attempted to appeal and requested that the circuit clerk prepare a record for appeal. At this point, Steinbuch became involved in the dispute with Hollingsworth regarding the calculation of the fees he owed for preparation of the record. Steinbuch’s appeal of the circuit court’s February 18 order was untimely, and, on September 10, 2020, we denied his motion for a belated appeal and/or motion to determine that the notice of appeal was timely. More than seven months later, on April 28, 2021, Steinbuch filed in the circuit court a “Motion for Determination of Prevailing Party” in which he sought a declaration that he was the “prevailing party” in his FOIA claim.² The circuit court denied Steinbuch’s motion on June 7, 2021, finding

¹A plaintiff who “substantially prevailed” in an action against the State to enforce his or her FOIA rights may be entitled to attorney fees and other expenses. Ark. Code Ann. § 25-19-107(e)(2) (Repl. 2014).

²Steinbuch’s April 28, 2021, motion was filed seven days after the Claims Commission entered summary judgment against the Corbitt Law Firm. Any party that is dissatisfied with a Claims Commission determination may appeal the decision to the General Assembly. Ark. Code Ann. § 19-10-211 (Supp. 2021); *see also Fireman’s Ins. Co. v. Ark. State Claims Comm’n*, 301 Ark. 451, 784 S.W.2d 771 (1990) (holding that the Claims Commission is an arm of the General Assembly and that appeals from the Commission’s decisions must be taken to the General Assembly).

that it was “improper and untimely.” The circuit court also ruled that if the motion had been timely, the “only factual determination that the court would have made would have been that the plaintiff caused a massive waste of judicial time and taxpayer monies.” That order is one of the two orders at issue in this appeal.

As discussed previously, Steinbuch’s dispute with Hollingsworth is essentially a separate action. His disagreement with Hollingsworth arose over the calculation of record fees for his attempted appeal of the circuit court’s order in the FOIA litigation. The circuit court denied Steinbuch’s motion for an order to waive record fees, and he appealed. We did not decide the merits of that appeal, but on April 29, 2021, remanded with instructions directing the circuit court to join Hollingsworth as an indispensable party, to conduct a hearing on Steinbuch’s motion, and to enter an order containing findings of fact. *Steinbuch v. Univ. of Ark.*, 2021 Ark. 99. Thereafter, on May 18, 2021, Steinbuch filed a motion in the circuit court to waive record fees. He served that motion on Hollingsworth on May 20, 2021. Hollingsworth filed an answer and response to the motion on June 17, 2021. Hollingsworth and Steinbuch filed a joint motion for an order to clarify, wherein both parties agreed that the motion Steinbuch served on Hollingsworth should be treated as a third-party complaint. On June 21, 2021, the circuit court denied Steinbuch’s motion to waive record fees. That is the order at issue in this appeal with respect to Steinbuch’s claims against Hollingsworth. After that order was entered, Hollingsworth amended her answer on July 1, 2021. On October 1, 2021, the circuit court granted the joint motion to clarify and stated that Hollingsworth had been served with a third-party complaint on May 20, 2021,

and that her answer was due on June 21, 2021. There have been no further proceedings below. Steinbuch filed a timely appeal of both the order denying his motion to waive record fees and his motion to be declared a prevailing party.

We first look to Steinbuch’s appeal of the circuit court’s order denying his motion for an order to waive record fees. Steinbuch not only seeks remand for a hearing but also requests that we reassign the case to a new judge, refund his costs, and refer the circuit judge to the Judicial Discipline and Disability Commission for “blatantly flouting” our mandate.

As a threshold matter, we must first consider whether the circuit court has entered an appealable order. Hollingsworth insists that it has not. Arkansas Rule of Appellate Procedure—Civil 2(a)(1) (2021) provides that “[a]n appeal may be taken from a circuit court to the Arkansas Supreme Court from . . . a final judgment or decree entered by the circuit court[.]” When no final or otherwise appealable order is entered, this court lacks jurisdiction to hear the appeal. *State ex rel. Rutledge v. Purdue Pharma, L.P.*, 2021 Ark. 133, 624 S.W.3d 106. For an order to be final and appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Siegel v. State*, 2020 Ark. 159, 598 S.W.3d 31. Further, the order must put the circuit court’s directive into execution, ending the litigation, or a separate branch of it. *Id.* The purpose of the finality requirement is to avoid piecemeal litigation. *Liberty Life Ins. Co. v. McQueen*, 364 Ark. 367, 219 S.W.3d 172 (2005).

When we last considered this case, our mandate directed the circuit court to join Hollingsworth as a party, conduct a hearing on the record-fees issue, and enter an order

making specific findings as to whether Steinbuch is entitled to relief. “The mandate is the official notice of action of the appellate court, directed to the court below, advising that court of the action taken by the appellate court, and directing the lower court to have the appellate court’s judgment duly recognized, obeyed, and executed.” *Ingle v. Ark. Dep’t of Human Servs.*, 2014 Ark. 471, at 5–6, 449 S.W.3d 283, 287. An inferior court has no power or authority to deviate from the mandate issued by the appellate court. *Id.*

In this instance, it is apparent from the record that proceedings are continuing in the circuit court. First, although the circuit court denied Steinbuch’s motion to waive record fees, it has not yet acted on our mandate’s directive to conduct a hearing and enter specific findings. Until the circuit court completes that task, it has not entered a final order. Additionally, after it denied Steinbuch’s motion to waive record fees, the circuit court entered an order granting the joint motion to clarify. This order made clear that Steinbuch’s motion for an order to waive fees was to be treated as a third-party complaint, and that complaint has not been dismissed or otherwise fully resolved. Thus, the order from which Steinbuch seeks to appeal is not a final, appealable order, and we must dismiss his appeal as to Hollingsworth. Because proceedings are ongoing below, the circuit court has at this time not failed to comply with our mandate.³ Therefore, we dismiss the appeal as to this point

³If Steinbuch has not already done so, he may rightly request a hearing date and an order with specific findings as this court has directed. We note that Steinbuch is not without remedy if the circuit court fails to timely comply with our mandate. A writ of mandamus will compel a court to act. *Evans v. State*, 2022 Ark. 31, 638 S.W.3d 847. However, we anticipate that the circuit court will have no difficulty in convening a hearing and entering an order with findings well before the end of this calendar year.

and do not address Steinbuch's request that this court reassign the case to a new judge, award him a refund of costs, or refer the circuit judge to the JDDC.

For his second point, Steinbuch argues that the circuit court erred by denying his motion for determination of prevailing party. Here, Steinbuch asserts that the circuit court refused to address the question of whether he was a prevailing party and contends that the summary denial of his motion without a hearing and findings was an abuse of discretion. The University agrees that we should review the circuit court's order under an abuse-of-discretion standard. An abuse of discretion is a high threshold that does not simply require error in the circuit court's decision but requires that the circuit court act improvidently, thoughtlessly, or without due consideration. *Dollar Gen. Corp. v. Elder*, 2020 Ark. 208, 600 S.W.3d 597.

The circuit court's order denying the motion for determination of prevailing party contained alternate rulings. First, the circuit court concluded that the motion was "improper and untimely." Second, the circuit court ruled that, if the motion had been timely, "the only factual determination the court would have made would have been that the plaintiff caused a massive waste of judicial time and taxpayer monies." On appeal, Steinbuch asserts that the circuit court erred by not convening a hearing and making detailed findings. He does not challenge the circuit court's alternative ruling that the motion was improper and untimely. "We have held that where the circuit court based its decision on two independent grounds and appellant challenges only one on appeal, the appellate court will affirm without addressing either." *Duke v. Shinpaugh*, 375 Ark. 358, 363, 290 S.W.3d 591, 595 (2009). The

circuit court's ruling that Steinbuch's motion was improper and untimely stands unchallenged. Because the circuit court based its decision on independent and alternative grounds, and Steinbuch failed to challenge them both, we affirm without addressing either.

Affirmed in part; dismissed in part.

Special Justices DOUG SCHRANTZ and D. CHRIS GARDNER join.

WOMACK and WEBB, JJ., concur.

WOOD and WYNNE, JJ., not participating.

Corbitt Law Firm, PLLC, by: *Chris P. Corbitt*, for appellant.

David A. Curran, Associate General Counsel, for appellees.