

Cite as 2011 Ark. 181

**SUPREME COURT OF ARKANSAS**

No. 10-929

HARRILL & SUTTER, PLLC,  
APPELLANT,

VS.

HANK FARRAR, LANESSA BASS,  
TONYA THOMPSON, ALAN SUGG,  
THE UNIVERSITY OF ARKANSAS  
BOARD OF TRUSTEES, MARIAM T.  
HOPKINS, ANDERSON, MURPHY, &  
HOPKINS, LLP, AND ARKANSAS  
CHILDREN'S HOSPITAL,  
APPELLEES,

**Opinion Delivered** 4-28-2011

APPEAL FROM THE CIRCUIT  
COURT OF SALINE COUNTY, NO.  
CV-09-364-3, HON. TED C.  
CAPEHEART, SPECIAL JUDGE,

DISMISSED WITHOUT PREJUDICE.

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**ROBERT L. BROWN, Associate Justice**

Appellant Harrill & Sutter, PLLC, appeals a decision of the Saline County Circuit Court finding that part of Arkansas's Freedom of Information Act was unconstitutional and finding that the appellees, which the appellant alleges are all private individuals or entities, had standing to challenge the statute. Because we conclude that there is no final order, which is required under Arkansas Rule of Civil Procedure 54(b) (2010), we dismiss this appeal without prejudice.

Harrill & Sutter filed a complaint in Saline County Circuit Court alleging a violation of the Arkansas Freedom of Information Act (FOIA) and Arkansas Code Annotated section

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25-19-105. Harrill & Sutter had previously filed a medical-malpractice action against three physicians—Hank Farrar, Lanessa Bass, and Tonya Thompson, who were employed by the University of Arkansas for Medical Sciences. Mariam Hopkins, a partner at the law firm of Anderson, Murphy, and Hopkins, LLP, was hired to represent the physicians. Harrill & Sutter subsequently filed a FOIA request asserting that because she represented public employees, Ms. Hopkins's file was a public record. Ms. Hopkins disputed that her file was a public record subject to FOIA and refused to allow Harrill & Sutter to inspect it.

Harrill & Sutter then filed the present case and alleged a violation of FOIA and Arkansas Code Annotated section 25-19-105, and named Dr. Farrar, Dr. Bass, and Dr. Thompson, all in their official capacities, along with Ms. Hopkins and Anderson, Murphy & Hopkins, LLP, as defendants. An amended complaint named Alan Sugg, as president of the University of Arkansas, in his official capacity, and the University of Arkansas Board of Trustees, as additional defendants. The circuit court granted a motion to intervene filed by Arkansas Children's Hospital, Medical Assurance Company, and Alison Baldrige.<sup>1</sup> Farrar; Bass; Thompson; Anderson, Murphy, & Hopkins; and Arkansas Children's Hospital all filed a counterclaim seeking a declaration that the application of FOIA under these circumstances

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<sup>1</sup>Arkansas Children's Hospital was named as a defendant in the underlying medical malpractice action. In their brief supporting their complaint in intervention, the intervenors asserted that they had a shared defense with the defendants and that some of the information requested by Harrill & Sutter potentially related to their defensive strategies in pending cases.

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was an unconstitutional violation of the attorney-client privilege.<sup>2</sup> In the event that the court determined that the FOIA was not unconstitutional as applied to these circumstances, the counter-claimants requested a protective order staying production of the information pending the final adjudication of the underlying medical malpractice case.

During the FOIA trial, Harrill & Sutter moved to nonsuit all of their claims. Although the circuit court granted the motion orally, no written order to that effect was ever entered. Under Arkansas Rule of Civil Procedure 41(a)(1) (2010), a voluntary nonsuit is “effective only upon entry of a court order dismissing the action.” The circuit court’s opinion and judgment order, entered on May 17, 2010, mentions that Harrill & Sutter was taking a non-suit and withdrawing the FOIA request. That order, however, does not mention whether the non-suit was granted and does not explicitly dismiss Harrill & Sutter’s claims. Because there is no such court order entered that dismisses the action in this case, there is no final judgment as required by Arkansas Rule of Civil Procedure 54(b).

In addition, the circuit court’s opinion and judgment order does not include a Rule 54(b) certificate permitting appeal before the resolution of all claims. In its order, the circuit court concluded that the documents requested by Harrill & Sutter were not subject to FOIA

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<sup>2</sup>The counter-claimants provided proof of notice to the Attorney General as required by Arkansas Code Annotated section 16-111-106. The Attorney General’s office, by letter dated March 20, 2009, acknowledged receiving notice that the counter-claimants challenged the constitutionality of Arkansas’s FOIA but declined to intervene, noting that because of the parties’ adverse interests there was no reason to doubt that the constitutionality of the challenged statute would be fully and competently defended.

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and entered judgment in favor of Dr. Farrar, Dr. Bass, Dr. Thompson, Ms. Hopkins, and Anderson, Murphy & Hopkins, LLP. Although the order recognizes that Arkansas Children's Hospital intervened in the action, the order does not mention the counterclaims of the other two intervenors, Medical Assurance Company and Alison Baldrige. At this stage, it appears that those two counterclaims remain outstanding.

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, crossclaims, or third-party claims, is not final for purposes of appeal. *Dodge v. Lee*, 350 Ark. 480, 485, 88 S.W.3d 843, 846 (2002) (citing *City of Corning v. Cochran*, 350 Ark. 12, 84 S.W.3d 439 (2002); *Office of Child Support Enforcem't v. Willis*, 341 Ark. 378, 17 S.W.3d 85 (2000)). Although Rule 54(b) provides a method by which the circuit court may direct entry of 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. *Dodge*, 350 Ark. at 485, 88 S.W.3d at 846. The failure to comply with the provisions of Rule 54(b) affects the subject-matter jurisdiction of this court. *Id.*, 88 S.W.3d at 847. Thus, this court is obligated to raise the issue on its own. *Id.*

In addition, we caution the parties that briefs filed with this court must comply with Arkansas Supreme Court Rule 4-2 (2010). We remind counsel that the addendum contained in the filed brief is required to contain all relevant documents that are essential to an understanding of the case and this court's jurisdiction on appeal. Ark. Sup. Ct. R. 4-2(a)(8). See *Bulsara v. Watkins*, 2010 Ark. 453. The appellant's addendum filed as part of its brief

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before this court does not include a copy of Harrill & Sutter's motion to dismiss or motion for judgment as a matter of law on the counterclaim and complaint in intervention. Although the appellant's addendum includes the trial court's order denying the motion, Arkansas Supreme Court Rule 4-2(a)(8) requires that all motions (including posttrial and postjudgment motions) concerning the order, judgment, or ruling challenged on appeal must be included. The notice of appeal specifically states that Harrill & Sutter appeals its denied motion to dismiss. Thus, the motion to dismiss must be included in the addendum in order to comply with Rule 4-2(a)(8).

While we note the above example of possible deficiencies in the addendum, this is in no way to be construed as exhaustive of all possible deficiencies, and we encourage appellant, prior to filing a second brief, to review our rules, the entire record, and his brief to ensure that there are no additional deficiencies.

We dismiss this appeal without prejudice because the failure to comply with Rule 54(b) deprives this court of subject-matter jurisdiction.

Dismissed without prejudice.

HENRY, J., not participating.