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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-17-744

TRAVIS SPURLING APPELLANT V. BILL REED, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF ALLIE MARIE REED, DECEASED, AND SHERLEEN REED APPELLEES	Opinion Delivered: March 7, 2018 APPEAL FROM THE MONTGOMERY COUNTY CIRCUIT COURT [NO. 49CV-11-74] HONORABLE TED C. CAPEHEART, JUDGE DISMISSED WITHOUT PREJUDICE

BART F. VIRDEN, Judge

Appellant Travis Spurling appeals from the Montgomery County Circuit Court's order denying his claim for conversion against appellees Bill Reed, individually and as executor of the Estate of Allie Marie Reed, deceased, and Sherleen Reed (collectively, the Reeds).[1] Spurling argues that the trial court erred (1) in denying his claim for conversion and (2) in finding that property taken by appellees on December 13, 2008, was their property, rather than the estate's, to which he is entitled to one-sixth. We dismiss for lack of a final, appealable order.

[1]There was testimony suggesting that Sherleen Reed is now deceased.

I. *Procedural History*

On December 9, 2011, Spurling filed a complaint against the Reeds, alleging causes of action for conversion, intentional infliction of emotional distress, and assault. Specifically, with respect to the conversion claim, Spurling alleged that the Reeds had removed property belonging to him and his mother, including but not limited to, a DVD player and discs, a DVD recorder, a VCR and tapes, two Zebco fishing rods, binoculars, a floor lamp with three adjustable necks, a floor-pole oscillating fan, "irreplaceable" baby, childhood, and high school photos, an iron bedstead, a clothes dryer, a steel garden plow, and miscellaneous items, including batteries, duct tape, masking tape, black insulating electrical tape, a large box of "4 mll" plastic, light bulbs, trash bags, tacks and nails, a cutting knife, a mayonnaise spreader, a mattock handle, a new box of canning jars, a dictionary, and three large pots with flowers for his grandmother's grave. Spurling also requested punitive damages, attorney's fees, and expenses, and he demanded a jury trial. He later "nonsuited" the jury-trial demand.

On August 18, 2015, the Reeds filed a counter complaint alleging causes of action for conversion and intentional infliction of emotional distress. They also requested punitive damages, attorney's fees, and expenses. With regard to their conversion claim, the Reeds alleged that Spurling wrongfully denied them access to Allie's house, which prevented Bill Reed from retrieving his 1930s .22 single-action Remington rifle, which is now unaccounted for and which held sentimental value and could not be replaced for less than $5,000; that the Reeds should be awarded reasonable rental value for the time that

Spurling wrongfully occupied the house resulting in loss of use in excess of $100,000; and that the Reeds should be awarded their portion of the $2,727.36 ($1,818.24), with pre- and postjudgment interest, which Spurling had received from a joint account belonging to Velma Qualls, Bill Reed, and Sherleen Reed.

On April 25, 2017, the trial court denied Spurling's claim for conversion because the items taken by appellees on December 13, 2008, had no monetary value, but the trial court found that all items of personal property that remained in Allie's home *after* December 13, 2008, belonged to Spurling. The trial court found that Spurling had failed to prove damages for intentional infliction of emotional distress and assault and therefore denied those claims. The trial court further denied both parties' requests for attorney's fees. The trial court found that Spurling failed to comply with the trial court's order to produce family photographs and quilt scraps. The trial court found that all items of personal property of Allie's currently in the possession of the Reeds are their sole and separate property. The trial court found that there was no property of any value remaining in Allie's estate and closed the case. Finally, the trial court found that there was not enough evidence to determine who had possession of the .22 rifle.

II. *Discussion*

Under Rule 54(b) of the Arkansas Rules of Civil Procedure, an order is not final for purposes of appeal when it adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties. *Bulsara v. Watkins*, 2010 Ark. 453. *See, e.g.*, *City of Corning v. Cochran*, 350 Ark. 12, 84 S.W.3d 439 (2002) (dismissing appeal because there was no final

order when a trial court did not rule on a counterclaim and did not specifically rule on the City's claim of conversion); *Price v. Carver*, 2017 Ark. App. 75, 513 S.W.3d 877 (dismissing appeal without prejudice when the record did not contain a Rule 54(b) certificate or a final order on the appellees' cross-appeal); *Belcher v. Denton*, 2015 Ark. App. 492 (dismissing appeal when judgment appealed from did not dispose of punitive-damages claim and there was "some question" whether it completely disposed of all of the estate's and beneficiaries' claims). The existence of a final order is a jurisdictional requirement for bringing an appeal, which this court is obliged to raise even though the parties do not. *Price*, *supra*.

The trial court did not dispose of the claims raised in the Reeds' counter complaint and did not specifically rule on the parties' requests for punitive damages and expenses. Moreover, there was no Rule 54(b) certificate included with the order on appeal. Because there are outstanding claims, we must dismiss the appeal for lack of a final, appealable order.[2]

[2]After entry of a final order, should either party choose to appeal from it, we note that the order currently before this court refers to a hearing conducted by the trial court in a probate matter on May 3, 2016, and states that an order from that proceeding is "attached hereto as Exhibit 'A' and incorporated herein as if set forth in full word for word." The referenced order was not attached, and it is not in the record. When the trial court's order incorporated the probate order, it became part of the order on appeal, which is required to be included in both the record and an appellant's addendum. *See* Ark. R. App. P.–Civ. 6(e); Ark. Sup. Ct. R. 4-2(a)(8)(A)(i). Moreover, should Spurling file another appeal after entry of a final order, we remind him that an abstract should include all material information from the transcript and that it must be an "impartial condensation" of the transcript. *See* Ark. Sup. Ct. R. 4-2(a)(5)(A) & (B). Here, there are 280 pages of testimony in the record. Spurling's abstract comprises seventeen pages, eleven of which are

Dismissed without prejudice.

GLADWIN and VAUGHT, JJ., agree.

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Jana Bradford, for appellee.

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devoted to his own testimony. The other six pages contain Bill Reed's testimony and testimony from eleven witnesses who testified for Bill Reed.