

Cite as 2018 Ark. App. 582
ARKANSAS COURT OF APPEALS
DIVISION I
No. CV-18-280

STEPHEN W. BOATRIGHT,
INDIVIDUALLY AND ON BEHALF OF
STEPHEN W. BOATRIGHT, D.D.S, P.A.
APPELLANT

V.

S-R PLAZA, LLC

APPELLEE

Opinion Delivered: December 5, 2018

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, NINTH
DIVISION
[NO. 60CV-13-2976]

HONORABLE MARY SPENCER
MCGOWAN, JUDGE

DISMISSED WITHOUT PREJUDICE

RITA W. GRUBER, Chief Judge

This appeal is from a landlord-tenant dispute over damages suffered by the landlord. Appellant Stephen Boatright, individually and on behalf of Stephen Boatright, D.D.S., P.A., contends on appeal that the circuit court abused its discretion by granting the landlord S-R Plaza's motion in limine and thereby excluding any evidence regarding repairs and alterations to the leased premises after the lease ended. We dismiss for lack of jurisdiction.

On July 25, 2002, appellant signed a ten-year lease with appellee S-R Plaza.¹ The lease space was in a new building that had not been "finished out." Pursuant to a

¹The lease was extended for several months, but no issues related to this are on appeal.

construction-allowance arrangement, Dr. Boatright hired a contractor and installed all interior walls, molding, cabinetry, heat and air, plumbing fixtures, floor covering, lighting, and dental equipment to operate a dental office in the space. Excluding appellant's "moveable equipment or furniture" and "dental equipment," all "alterations, physical additions or improvements to the leased premises made by Tenant" became the property of S-R Plaza and were to be surrendered with the lease upon termination. At the end of the extended lease term, the parties disagreed about when appellant had "vacated" the premises and, consequently, the amount of rent that remained due. They also disputed the condition of the premises after appellant vacated and whether appellant had removed items belonging to S-R Plaza.

S-R Plaza filed a complaint against appellant contending that appellant had failed to vacate by the end of the lease term and that he had removed sinks and counters, millwork, cabinets, and granite base trim from the leased premises before vacating. S-R Plaza alleged that appellant had breached the lease agreement and requested damages for unpaid rent and for removal of the items and associated damage to the property. S-R Plaza also alleged a claim of conversion, contending appellant had exercised dominion and control over S-R Plaza's property—sinks, counters, millwork, cabinets, and base trim—in violation of S-R Plaza's rights and requested damages for the replacement cost of the items. Appellant filed an answer denying the claims and later an amended answer and counterclaim alleging breach of the lease agreement due to S-R Plaza's failure to provide construction-administration services as promised.

On December 29, 2014, the circuit court granted S-R Plaza's motion for summary judgment in part, finding appellant breached the lease agreement regarding amounts due and owing for rent for April and May 2013 and finding appellant breached the lease agreement regarding removal of granite base moldings from the entire leased premises and the sinks and toilets from the staff restroom and patients' restroom. The court found a question of fact remained as to whether fixtures in areas other than restrooms, cabinetry, and countertops constituted "dental equipment" and thus denied summary judgment regarding those items.

On November 1, 2017, the court granted S-R Plaza's motion in limine, excluding any evidence of subsequent repairs and alterations of the leased premises after termination of the parties' lease. On November 14 and 15, 2017, the circuit court held a jury trial, and it entered a judgment in S-R Plaza's favor on December 8, 2017, incorporating the jury's interrogatories. All six of the jury's interrogatories concerned S-R Plaza's claim for breach of contract and the damages resulting therefrom. The court also restated its findings from its order granting partial summary judgment, referenced a stipulation by the parties regarding a setoff of the damages award for a deposit paid by appellant, and calculated an exact judgment amount in favor of S-R Plaza. The court's order did not mention S-R Plaza's claim for conversion or appellant's counterclaim.

Appellant filed this appeal, alleging only that the circuit court abused its discretion in granting the motion in limine and excluding any evidence or argument regarding

subsequent repairs or alterations to the leased premises after termination of the lease. Before addressing appellant's arguments, we turn to our jurisdiction.

We have jurisdiction over an appeal only if the order appealed is a final order or meets one of several exceptions under Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure–Civil (2017). A final order is one that dismisses the parties, discharges them from the action, or concludes their rights to the subject matter in controversy. *Rigsby v. Rigsby*, 340 Ark. 544, 546, 11 S.W.3d 551, 552 (2000). Because the issue is one of jurisdiction, it is a matter we will consider even though the parties have not raised it. *Haile v. Ark. Power & Light Co.*, 322 Ark. 29, 31, 907 S.W.2d 122, 123 (1995). Absent a final order or a properly executed certificate from the circuit court making an “express determination, supported by specific factual findings, that there is no just reason for delay”—which we do not have—an order that fails to adjudicate all of the parties' claims cannot be appealed. Ark. R. Civ. P. 54(b) (2017). The complaint in this case alleged a breach-of-contract claim and a conversion claim. In addition, appellant filed a counterclaim for breach of contract. Neither the record nor the addendum contains a written order addressing either the conversion claim or the counterclaim. Thus, the order appealed from is not a final order. Accordingly, we dismiss the appeal.

Dismissed without prejudice.

GLADWIN and BROWN, JJ., agree.

Danny R. Crabtree, for appellant.

*Friday, Eldredge & Clark, LLP, by: Price C. Gardner and Phillip M. Brick, Jr., for
appellee.*