Cite as 2009 Ark. App. 741

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA08-945

SHELBA MCKINNEY and WILLIAM MCKINNEY APPELLANTS V. ARKANSAS CARDIOLOGY, P.A., and GARY COLLINS, M.D. APPELLEES	**Opinion Delivered** November 4, 2009 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, [NO. CV2006-11967-3] HONORABLE JAMES MOODY, JR., JUDGE APPEAL DISMISSED

WAYMOND M. BROWN, Judge

Appellants, Shelba and William McKinney, filed this negligence suit against appellees, Arkansas Cardiology, P.A., and Gary Collins, M.D., after Mrs. McKinney fell from a treadmill during a stress test administered by appellees. Prior to trial, the Pulaski County Circuit Court dismissed appellants' suit for failure to obey a discovery order and made an additional ruling granting summary judgment to Dr. Collins. Appellants appeal those rulings, but we must dismiss for lack of a proper notice of appeal.

On April 15, 2008, the circuit court dismissed appellants' suit after appellants "failed to comply with the order of the Court entered on April 16, 2007, directing them to file full and complete responses to discovery within ten days." On May 13, 2008, the court vacated the dismissal order and entered a new order. The new order again dismissed appellants'

complaint for discovery violations but also granted Dr. Collins's motion for summary judgment, which the doctor had filed based on appellants' inability to provide qualified expert testimony as required by the Arkansas Medical Malpractice Act. Ark. Code Ann. §§ 16–114–201 to -212 (Repl. 2006). On May 15, 2008, appellants filed a notice of appeal, but their notice referenced only the vacated April 15, 2008 order. They filed no notice of appeal from the May 13, 2008 order.

A notice of appeal shall designate the order from which the appeal is taken. *See* Ark. R. App. P.–Civ. 3(e). If a notice of appeal fails to designate a final order, it is ineffective. *See Daniel v. State*, 64 Ark. App. 98, 983 S.W.2d 146 (1998). In this case, appellants' notice of appeal not only failed to designate the May 13, 2008 final order, it designated an order that had been vacated. A vacated order is effectively null and void and without legal effect. *See generally Tri-S Corp. v. W. World Ins. Co.*, 135 P.3d 82 (Haw. 2006); 7-*Eleven, Inc. v. Dar*, 842 N.E.2d 260 (Ill. Ct. App. 2005); *Brown v. Brown*, 638 S.E.2d 622 (N.C. Ct. App. 2007); *D'Elia v. Folino*, 933 A.2d 117 (Pa. Super. Ct. 2007); *see also Black's Law Dictionary* 1688 (9th ed. 2009) (defining "vacate" as "to nullify or cancel; make void; invalidate.") It is clear beyond dispute that an appellant cannot effectively appeal from a void and nullified order that has been replaced by a final, appealable order.

Our courts have permitted certain irregularities in designating an order on appeal, such as where the appellant simply misidentifies the date of the final order and clearly intended to appeal from that order, *see Pro-Comp Mgmt., Inc. v. R.K. Enterps., LLC*, 372 Ark. 190, 272

S.W.3d 91 (2008), *Sudrick v. Farm Bureau Mut. Ins. Co.*, 49 Ark. App. 896 S.W.2d 452 (1995), or where the appellant appeals from an interim order that operates in all material respects as a final order. *See Vimy Ridge Mun. Water Imp. Dist. v. Ryles*, 373 Ark. 366, 284 S.W.3d 70 (2008). However, those circumstances are not applicable here. Appellants appealed from an order that had been vacated and was not in existence when they filed their notice of appeal. We must therefore dismiss the appeal.

Appeal dismissed.

GRUBER and BAKER, JJ., agree.