

Cite as 2009 Ark. App. 879

ARKANSAS COURT OF APPEALS

No. CA08-1346

JERRY BRASFIELD

APPELLANT

V.

JACQUELINE MURRAY

APPELLEE

Opinion Delivered December 16, 2009APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT,
[NO. CV2004-124-2-5]HONORABLE JODI RAINES DENNIS,
JUDGE

APPEAL DISMISSED

PER CURIAM

This is the second time this matter has been before this court. We dismissed the first appeal for lack of a final order. *Brasfield v. Murray*, 96 Ark. App. 207, 239 S.W.3d 551 (2006). Unfortunately, we must again dismiss this appeal because the order appealed from does not dispose of all of the claims between the parties.

In June 2001, the parties entered into a contract for appellee Jacqueline Murray to purchase a home financed by the builder, appellant Jerry Brasfield. Murray filed suit against Brasfield in June 2003, alleging that the contract was usurious and seeking an order voiding the contract as to the unpaid interest and an award of her attorney's fees. Murray also alleged breach of contract and sought damages for work that was not completed on her home and repair of Brasfield's "shoddy construction." Brasfield filed a general denial to the complaint and,

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in February 2004, filed a separate complaint against Murray for foreclosure and termination of their contract. The two lawsuits were consolidated in March 2005. The circuit court granted Murray a partial summary judgment on her claim for usury, and we dismissed Brasfield's attempted appeal from that judgment. *Brasfield, supra*. Our opinion indicated that the unresolved issues included Brasfield's claims seeking to foreclose, quiet title, and termination of the land sale contract. 96 Ark. App. at 208, 239 S.W.3d at 552. We also indicated that Murray's claims for breach of contract and damages for uncompleted work might likewise be unresolved. *Id.*

Following the dismissal of the appeal, Brasfield filed a motion seeking to set aside the partial summary judgment on May 24, 2007. The motion sought to have the circuit court reconsider the summary judgment on the usury issue by considering that Murray lost her interest in the property in her bankruptcy case and that federal law preempted Arkansas's usury limits. Murray responded to the motion by asserting that Brasfield was attempting to mislead the circuit court and that the motion was without merit. The circuit court denied the motion to set aside the summary judgment without explanation on September 4, 2007.

Murray filed a petition for contempt citation seeking to have Brasfield held in contempt for failing to comply with the circuit court's directive in the 2005 partial summary judgment that he file an affidavit of his assets and property. In response to the petition, Brasfield asserted that the circuit court erred in granting the summary judgment because there were issues remaining to be litigated. He also reasserted his arguments that federal law preempted Arkansas's usury limits, that Murray was estopped to raise the issue of usury, and that the bankruptcy court

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order was res judicata as to Murray's interest in the property.

The court held a hearing on Murray's contempt petition. There was a colloquy between the court and counsel as to whether Brasfield's outstanding foreclosure and eviction claims were now moot because Murray vacated the property in February 2008, and the property was foreclosed on by a third-party lender who held a first mortgage on the property. The court allowed Brasfield until July 28, 2008, to file his affidavit and schedules. If the affidavit was not timely filed, the court would consider the contempt issue. The court's written order was entered on August 7, 2008.

Brasfield filed his notice of appeal on August 13, 2008, stating that he was appealing from the order entered on August 7, 2008. However, all of his arguments are directed at the earlier partial summary judgment. In his brief, he contends that the circuit court erred in granting Murray a partial summary judgment, in refusing to estop Murray from raising the defense of usury, and in its calculation of interest due Murray and its award of attorney's fees. These are the same issues Brasfield attempted to raise in the first appeal.

Rule 2 of the Arkansas Rules of Appellate Procedure—Civil allows appeals only from final judgments and orders. Finality is a jurisdictional question which we may address sua sponte. *Spill Responders, Inc. v. Felts*, 2009 Ark. App. 669, ___ S.W.3d ___. For an order to be final, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Fisher v. Chavers*, 351 Ark. 318, 92 S.W.3d 30 (2002). Arkansas Rule of Civil Procedure 54(b) provides that, when more than one claim for

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relief is presented in an action or when multiple parties are involved, an order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not a final, appealable order. In particular, when an order adjudicates fewer than all counts of a multi-count complaint, it is not a final order, and the appeal must be dismissed. *See Hambay v. Williams*, 335 Ark. 352, 980 S.W.2d 263 (1998); *Brasfield, supra*; *Strack v. Capital Servs. Group*, 87 Ark. App. 202, 189 S.W.3d 484 (2004).

As we pointed out in the prior appeal, the partial summary judgment was not a final order from which an appeal could be taken. It well may be that the circuit court intended that the August 7, 2008 order dispose of the issues that were outstanding. However, it did not do so. The general rule is that a judgment is construed as written, and the language of the judgment, as opposed to the reasons for the judgment, is controlling. *Tweedy v. Counts*, 73 Ark. App. 163, 40 S.W.3d 328 (2001). We also point out that the same order is in the record but not in the addendum. According to Ark. Sup. Ct. R. 4-2(a)(8), an appellant shall include in his brief an addendum that contains photocopies of the order or judgment appealed from, as well as the notice of appeal. *See Lewis v. State*, 84 Ark. App. 327, 139 S.W.3d 810 (2004).

The burden is on appellant to bring a record before the appellate court demonstrating that all claims in the matter have been brought to conclusion and that the circuit court's judgment is final. *State Farm Mut. Auto. Ins. Co. v. Thomas*, 312 Ark. 429, 850 S.W.2d 4 (1993). Where, as here, that was not done, we have no choice but to dismiss the appeal without

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prejudice. *Id.*

Appeal dismissed.