

Cite as 2009 Ark. App. 882

ARKANSAS COURT OF APPEALS

EN BANC

No. CA 09-1066

WILLIAM CANADY AND LAVON
CANADY

APPELLANTS

V.

RICKY GARRETT, DAVID GOBER
JR., AND ST. MARK'S BAPTIST
CHURCH

APPELLEES

Opinion Delivered December 16, 2009APPEAL FROM THE CONWAY
COUNTY CIRCUIT COURT
[NO. CV-2004-78]HONORABLE TERRY SULLIVAN,
JUDGEAPPEAL DISMISSED; MOTION
MOOT**PER CURIAM**

Appellants Lavon and William Canady have filed a motion to extend the time for filing their opening brief. For the reasons discussed below, we must dismiss the appeal.

Appellants own land that is adjacent to St. Mark's Baptist Church in Menifee. In May 2005, appellees Ricky Garrett and David Gober, as trustees of the church, obtained an injunction permanently enjoining appellants from placing any structures on the church's property. In May 2006, the trustees filed a motion for contempt against appellants, alleging that appellants had tilled a garden that encroached upon the church's property in violation of the injunction. In their response, appellants asserted that they had acquired the garden area by adverse possession. After a hearing, the trial court entered an order that established the church's boundary as the line shown on a previous survey. The trial court also found that

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appellants owned the garden area by virtue of adverse possession. In the order, the court directed appellants to have the garden surveyed and ruled that it would amend the order to include a property description of the garden as established by the survey. In a previous opinion, we dismissed an appeal from this order, holding that the order was not final because the trial court contemplated further action. *Canady v. Garrett*, CA 08-43 (Dec. 17, 2008).

On August 29, 2009, the trial court amended the previous order to include a property description of the garden area. Appellants filed a timely notice of appeal on September 3, 2009. Appellants lodged a supplemental record that included the amended order and notice of appeal on September 24, 2009.

After one extension, appellants' brief is now due for filing in this court, but they have filed a motion to postpone the filing of their brief. They assert that a delay is necessary because they have petitioned the trial court to rule on the appellees' motion for contempt but have not yet obtained an order from the trial court disposing of the motion. However, the trial court does not have jurisdiction to enter such an order because the record has been lodged in this court. *Myers v. Yingling*, 369 Ark. 87, 251 S.W.3d 287 (2007).

Our review of the record reveals that the trial court has yet to enter a final order in this case because the trial court has not disposed of the appellees' motion for contempt. An order that fails to adjudicate all of the claims as to all of the parties, whether presented as claims, counterclaims, cross-claims, or third-party claims, is not final for purposes of appeal. *Office of Child Support Enforcement v. Willis*, 341 Ark. 378, 17 S.W.3d 85 (2000). Although

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Rule 54(b) of the Arkansas Rules of Civil Procedure provides a method by which the trial court may direct the entry of final judgment as to fewer than all of the claims or parties, an order is not final where there is no attempt to comply with the rule. *Id.* We cannot entertain an appeal without a final order or Rule 54(b) certification. *Id.* Here, we have neither. Accordingly, we must dismiss the appeal without prejudice. Appellants' motion to postpone filing their brief is moot.

Appeal dismissed; motion moot.