

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA08-1382

CENTRAL ARKANSAS
FOUNDATION HOMES, LLC
APPELLANT

V.

REBECCA CHOATE
APPELLEE

Opinion Delivered MAY 20, 2009

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT,
[NO. CV-06-638]

HONORABLE DAVID LEE
REYNOLDS, JUDGE

DISMISSED

RITA W. GRUBER, Judge

Appellant Central Arkansas Foundation Homes, LLC, brings this appeal from the circuit court's order rescinding a contract for appellant to construct a home for appellee Rebecca Choate on acreage that she owned. Appellant raises three points, first contending that the circuit court abused its discretion in setting aside a previous judgment against appellee.¹ Alternatively, it contends that the court erred in failing to enter judgment for appellant on the grounds of quantum meruit and that the judgment in appellee's favor was clearly erroneous. We are without jurisdiction to entertain this appeal, however, because it

¹Appellant refers to this order as a default judgment, but we note that it was not based on appellee's failure to appear or defend: she had answered a counterclaim filed by appellant, and the judgment was based upon evidence presented at a trial. A judgment rendered after the defendant has answered and after a trial at which she failed to appear is not a default judgment under Ark. R. Civ. P. Rule 55. *Smith v. Ark. State Highway Comm'n*, 21 Ark. App. 49, 728 S.W.2d 202 (1987).

After appellee retained new counsel, the judgment was set aside and a new trial was held. This appeal arises from the order issued after the new trial.

is not clear to us that all claims were resolved by the trial court's order. The appeal is dismissed.

The relevant facts are these. On July 31, 2006, through her attorney, appellee filed a lis pendens and a complaint against appellant for rescission of the parties' contract for appellant to construct a "turn-key" house for her on two acres of a six-acre tract of land she owned. The allegations in her complaint included the following: the house faced the wrong direction; "under somewhat nebulous circumstances," appellant had her sign a quitclaim deed to the two acres, transferring ownership to appellant and conveying an easement across her adjacent four-acre tract; costs and labor above the contract price had been incurred due to appellant's poor workmanship; there were material and substantial defects in the house; and appellant failed to substantially perform and breached the contract wilfully and purposely, resulting in substantial damages to appellee.

Appellant filed an answer and counterclaim on November 28, 2006, alleging that the house was properly constructed, and praying that appellee's complaint be dismissed and judgment entered in appellant's favor. In its counterclaim, in addition to requesting dismissal of appellee's complaint, appellant asked the court to require appellee to perform her contractual obligations to close the sale and loan and pay off the debt owed to appellant or, alternatively, to order forfeiture of the property to appellant. Appellant also requested, should rescission of the contract be granted, that judgment be entered against appellee in quantum meruit for "the value of the improvements made upon the property." Appellee answered appellant's counterclaim, affirmatively stating that appellant's breach of contract released her

of any contractual obligation, and asserting numerous defenses and affirmative defenses.

The circuit court held a trial, and judgment was entered in appellee's favor. By written order of June 6, 2008, the court rescinded the contract, finding that the house as constructed was not in substantial compliance with the parties' agreement. After finding that appellee had been required to execute a quitclaim deed to two acres of her property and to execute a document with One Bank of Arkansas to guarantee a loan taken out by appellant for construction of the house, the court held appellant responsible for the payment of mortgage debt and ordered appellant to hold appellee harmless for the guarantee obligation to the bank.² Appellant was ordered to remove the house from appellee's property and restore the property to its original state, and was ordered to execute a quitclaim deed transferring the property back to her free and clear of any obligation or mortgage lien placed thereon by appellant.

The finality of a circuit court's judgment is governed by Ark. R. Civ. P. 54(b)(1):

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination, supported by specific factual findings, that there is no just reason for delay and upon an express direction for the entry of judgment.

(Emphasis added.) In the event that a circuit court makes the findings contemplated by the rule, it shall execute a Rule 54(b) certificate, which shall appear immediately after the court's signature on the judgment and shall set forth the factual findings upon which the determination to enter judgment as final is based. *Id.* In the absence of such a certificate, any

²We note, however, that One Bank is not named as a party in the circuit court's order.

order that adjudicates fewer than all of the claims shall not terminate the action as to any of the claims. Ark. R. Civ. P. 54(b)(2).

The purpose of Rule 54(b) is to prevent piecemeal litigation. *D'Arbonne Constr. Co. v. Foster*, 348 Ark. 375, 72 S.W.3d 862 (2002); *McKibben v. Mullis*, 79 Ark. App. 382, 90 S.W.3d 442 (2002). The possibility of piecemeal litigation remains if an order disposes of less than all of the claims against all of the parties and there are remaining issues to be litigated. *Cf. id.* at 385, 90 S.W.3d at 444 (stating it was clear that the dismissal of a claim for lack of standing concluded all claims against all parties because the original complaint was a nullity).

The circuit court's order in the present case does not address the alternative prayer in appellant's counterclaim for judgment in quantum meruit, and it is not apparent to us that this counterclaim has been disposed of. Nor does the order contain a Rule 54(b) certificate. Thus the order has not terminated the actions below and is not a final, appealable order. Because the existence of a final, appealable order is necessary to the exercise of our jurisdiction, we must dismiss this appeal.

Dismissed.

KINARD and BROWN, JJ., agree.