

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 09-1193

RANDALL MITCHELL and DEMITA
MITCHELL
APPELLANTS / CROSS-APPELLEES

V.

SARAH FELLS
APPELLEE / CROSS-APPELLANT

Opinion Delivered April 7, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CV 2007-5646]

HONORABLE ALICE S. GRAY,
JUDGE

REBRIEFING ORDERED

M. MICHAEL KINARD, Judge

In this contract-dispute case, Randall and Demita Mitchell appeal from the circuit court's "Judgment Upon Jury Verdict" filed May 13, 2009, and from the circuit court's denial of their motion for judgment notwithstanding the verdict and motion for new trial, which were filed on May 22, 2009, and deemed denied when the circuit court did not enter an order after thirty days. Appellants argue that the circuit court erred in denying their motion for judgment notwithstanding the verdict because there is an absence of sufficient evidence to support the verdict. In an interrogatory verdict, eleven jurors found that appellants had failed to meet their burden of proof in their counterclaim to quiet title or for reformation of the disputed contract, which appellants claimed "erroneously purported to convey" more real property than the parties intended. Sarah Fells cross-appeals, arguing that the circuit court

erred by failing to enter a judgment on her behalf for back rent that the Mitchells received from a tenant on the disputed property.

We cannot reach the merits of the parties' arguments because of deficiencies in the briefs. Rule 4-2 of the Rules of the Arkansas Supreme Court and Court of Appeals provides that an addendum to an appellate brief "shall include true and legible photocopies of the order, judgment, [or] decree . . . from which the appeal is taken, along with any other relevant pleadings, documents, or exhibits essential to an understanding of the case and the Court's jurisdiction on appeal." Ark. Sup. Ct. R. 4-2(a)(8) (2009). Absent the circuit court's certification of final judgment under Arkansas Rule of Civil Procedure 54(b)(1), any judgment or order that "adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties." Ark. R. Civ. P. 54(b)(2) (2009). Whether a judgment, decree, or order is final is a jurisdictional issue that the appellate court has a duty to raise, even if the parties do not, in order to avoid piecemeal litigation. *Ford Motor Co. v. Harper*, 351 Ark. 559, 95 S.W.3d 810 (2003).

Here, appellants have failed to include in their addendum documents essential to an understanding of this court's jurisdiction. Without the order dismissing Stewart Title Guaranty Company as a defendant, we would be left with questions regarding the finality of the court's order because that order does not include Stewart Title. Also, the unserved summons on defendant Warren Hart, which is part of the record, should be included in the

addendum. *See* Ark. R. Civ. P. 54(b)(5) (2009) (providing that any claim against a named but unserved defendant is dismissed by the circuit court's final order or decree). Cross-appellant has not included in her addendum the proposed order that she contends the circuit court should have entered in lieu of the judgment it did enter, which did not include back rent. This proposed order is essential to an understanding of the issues on cross-appeal. Our supreme court has expressed a preference for a bright-line rule with an objective standard, requiring the inclusion of pleadings and motions that led to the order being appealed. *See Bryan v. City of Cotter*, 2009 Ark. 172, ___ S.W.3d ___.

Both parties have fifteen days from the date of this order in which to file a substituted brief with an addendum that contains the above-listed items, as well as any other documents that may be necessary to comply with the rules. *See* Ark. Sup. Ct. R. 4-2(b)(3). We encourage appellate counsel, before filing the substituted addenda, to review the rules and substituted addenda to ensure that no additional deficiencies are present. Both appellees shall have the choice to file a revised brief in the time scheduled by the clerk, or they may stand on the brief already submitted. If the parties fail to file briefs with complying addenda within the prescribed times, the judgment may be affirmed for noncompliance with Rule 4-2(a)(7)–(8). *Id.*

Rebriefing ordered.

GRUBER and GLOVER, JJ., agree.