

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA10-96

GEORGE GIBBS and RACHEL GIBBS
APPELLANTS

V.

ROGER DALE STILES and SHERRIE
LEE TURNER STILES
APPELLEES

Opinion Delivered October 27, 2010

APPEAL FROM THE MADISON
COUNTY CIRCUIT COURT
[No. CV 2008-58]

HONORABLE KIM M. SMITH, JUDGE

DISMISSED WITHOUT PREJUDICE

LARRY D. VAUGHT, Chief Judge

This case involves a boundary dispute over the title to a small parcel of property adjacent to the White River in Madison County, Arkansas. The parties, appellants Rachel and George Gibbs and appellees Sherrie and Roger Stiles, claim title to the tract at issue. After a bench trial, the Madison County Circuit Court entered an order declaring the location of the boundary between the appellants' and appellees' property and concluding that the land in question was originally owned by the appellants. However, the trial court further found that the appellees had acquired the appellants' land by adverse possession. The appellants filed an appeal, but we must dismiss it for lack of a final order.

After the appellants filed suit, the appellees counterclaimed. Later, each party filed third-

party actions against the parties from whom they purchased their respective properties.¹ Following a bench trial, the trial court entered an order finding in favor of the appellees (stating that the appellants' claim to title was defeated) and dismissing the appellees' third-party complaint against the Waggoners. The trial court also found that the land described in the Waggoners' deed to the appellees overlapped and impaired title to the land described in the Phillipses' deed to the appellants. The trial court continued, stating that the appellants "may proceed in their Third Party Complaint against the Phillips[es]." Presumably, because the order did not resolve all claims for relief, the court included the following certificate:

Rule 54(b) Certificate: Upon the basis of the foregoing factual findings the Court hereby certifies, in accordance with Rule 54(b)(1) Ark. R. Civ. P., that it has determined that there is no just reason for delay of the entry of a final judgment and that the Court has and does hereby direct that the judgment shall be a final judgment for all purposes.

Appellants appeal from the order containing this certificate. However, because the certificate did not comply with Rule 54(b), the order is not final and appealable.

An order that adjudicates fewer than all of the claims in a case is not a final judgment. *Swift Transp. Co. v. Turner*, 2009 Ark. App. 562, at 2. However, Rule 54(b) of the Arkansas Rules of Civil Procedure permits entry of a final judgment in some instances where the court has disposed of fewer than all of the parties' claims, but the court must execute a proper Rule 54(b) certificate to do so. The rule requires an express determination, "supported by specific factual findings," that there is no just reason for delay, and the certificate must contain "the factual

¹Appellants filed a third-party complaint against their sellers, Mr. and Mrs. Phillips, and appellees filed a third-party complaint against their sellers, Mr. and Mrs. Waggoner.

findings upon which the determination to enter the judgment as final is based.” Ark. R. Civ. P. 54(b)(1). The factual findings must demonstrate that a likelihood of hardship or injustice will occur unless there is an immediate appeal, and the court must set forth facts to support its conclusion. *Swift*, 2009 Ark. App. 562, at 2–3.

Here, the Rule 54(b) certificate contains no specific factual findings explaining why a hardship or injustice would result if an immediate appeal were not permitted. This lack of factual specificity in the certificate does not meet the requirements of Rule 54(b) and is not sufficient to certify the appeal. *Follett v. Fitzsimmons*, 100 Ark. App. 347, 268 S.W.3d 902 (2007); *Rutledge v. Christ Is The Answer Fellowship, Inc.*, 82 Ark. App. 221, 105 S.W.3d 816 (2003); *Stouffer v. Kralicek Realty Co.*, 81 Ark. App. 89, 98 S.W.3d 475 (2003). Accordingly, we must dismiss the appeal for lack of finality. The dismissal is without prejudice. *Swift*, 2009 Ark. App. 562, at 3; *Follett*, 100 Ark. App. at 350, 268 S.W.3d at 905.

Dismissed without prejudice.

GLOVER and BAKER, JJ., agree.