

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION IV

CA 08-143

August 27, 2008

CAROLYN COLDIRON

APPELLANT

APPEAL FROM THE CIRCUIT COURT
OF SEBASTIAN COUNTY
[NO. CV-06-154]

V.

DR. E. JOHN LANDHERR

APPELLEE

HONORABLE JAMES O. COX,
JUDGE

DISMISSED

In this case of medical malpractice, appellant Carolyn Coldiron takes issue with the trial court's decision to grant appellee Dr. E. John Landherr's motion for summary judgment. Coldiron contends that the trial court erred in ruling that her claims of negligence against Dr. Landherr could not be established without expert testimony. We dismiss the appeal because the record does not contain a notice of appeal from the final order.

On March 8, 2000, Dr. Landherr performed an anterior cervical discectomy and fusion at C5-6 and C6-7 on Coldiron at the Sparks Regional Medical Center. Coldiron developed an abscess at the surgical site, and on May 30, 2000, Dr. Landherr operated to drain the abscess and remove the hardware that had been affixed in the previous surgery. It was subsequently discovered that Coldiron had a tear in her esophagus, which was surgically repaired by Dr. Paul E. Farris on

June 9, 2000.

Coldiron filed suit on February 1, 2006, asserting claims of negligence against Dr. Landherr,¹ Sparks Regional Medical Center, Sparks Medical Foundation, and five John Doe defendants. Coldiron dismissed with prejudice her claims against Sparks Regional Medical Center on September 27, 2006. The trial court subsequently granted Dr. Landherr's motion for summary judgment on July 10, 2007. The trial court amended that order the next day to reflect that the dismissal of the claims against Dr. Landherr was with prejudice. Coldiron filed a notice of appeal from those orders on August 8, 2007.

On November 5, 2007, the trial court granted Coldiron's motion to dismiss with prejudice the claims against the John Doe defendants. Coldiron filed an amended notice of appeal that same day. Later, on January 22, 2008, the trial court entered an order dismissing Coldiron's claims against Sparks Medical Foundation. The record contains no notice of appeal from that order.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure - Civil provides that an appeal may be taken from a final judgment or decree entered by the trial court. In cases involving multiple claims and multiple parties, an order dismissing fewer than all of the parties is not a final, appealable order, unless an Ark. R. Civ. P. 54(b) certification is made. *Downing v. Lawrence Hall Nursing Center*, 368 Ark. 51, 243 S.W.3d 263 (2006). For this reason, the January 22, 2008, order dismissing the claims against Sparks Medical Foundation was the final order, because it marked the disposition of the claims against the last remaining party defendant. However, the record does not include a notice of appeal taken from that order.

A notice of appeal must be filed within thirty days of the final order. Ark. R. App. P. -

¹ Dr. Landherr died during the pendency of this action, and the trial court entered an order substituting his wife as the special administratrix of his estate and reviving the cause of action.

Civil 4(a). The timely filing of a notice of appeal is jurisdictional and is an issue that we are required to raise on our own motion. *Stacks v. Marks*, 354 Ark. 594, 127 S.W.3d 483 (2003). Because the record contains no notice of appeal from the final order, we must dismiss the appeal.

Dismissed.

HART, J., agrees.

BAKER, J., concurs.