

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

DIVISION IV

CA 06-1066

September 19, 2007

EDMOND TORELLI

APPELLANT

APPEAL FROM THE PULASKI COUNTY
CIRCUIT COURT
[NO. CV-2004-4739-17]

V.

HONORABLE MACKIE PIERCE,
JUDGE

NAGA GORIPARTHI and CYNTHIA
WEHRLI

APPELLEES

DISMISSED

Appellant, Edmond Torelli, appeals the trial court's order bifurcating his claims against two defendants who were involved in two separate automobile accidents with appellant. On appeal, appellant argues that the trial court's order was an abuse of discretion, and this court should grant him a new trial. We are precluded from reaching the merits of appellant's argument, however, as the order appealed from was not a final order, and therefore, we dismiss.

Appellant was involved in two separate traffic accidents in January 2004. On January 13, appellant was involved in an accident with Naga Goriparthi. The second accident occurred two weeks later, on January 28, involving appellant and Cynthia Wehrli. Appellant filed a single suit encompassing both accidents in Pulaski County Circuit Court on April 19,

2004. The complaint sought damages against both defendants and alleged that joinder was proper because there were common questions of fact regarding the proximate cause of appellant's injuries and damages. Both defendants answered and denied the material allegations of the complaint, including that joinder was proper.

On April 28, 2005, Wehrli filed a motion to bifurcate and a supporting brief, arguing that in order for joinder to be proper under Ark. R. Civ. P. 20, there must be a common question of law or fact and that appellant's right to relief must arise from the same occurrence. Wehrli also argued that the jury could easily confuse the facts as to which accident caused appellant's injuries and what damages to assess accordingly and cited Ark. R. Civ. P. 42, which allows claims to be severed to prevent prejudice. Appellant responded by filing his own brief in which he argued that Rule 20 allowed for joinder where there was a "series of transactions or occurrences" and common questions of law or fact. He also asserted that he would be prejudiced if the case were bifurcated because the jury could hear references to the other accident and infer that the other case had settled, and, therefore, be less inclined to award him the damages to which he would otherwise be entitled. In a letter opinion dated May 25, 2005, the trial court granted Wehrli's motion and allowed appellant to choose the order in which the claims would be tried. An order memorializing the decision was entered on June 8, 2005.

Appellant's claim against Goriparthi was the first to be tried, and although the jury found for appellant, it assessed his damages at \$0. An order dismissing his claim against Goriparthi was filed on June 1, 2006. The order specifically stated that appellant's claim

against Wehrli was unaffected and indicated that the matter had been set for trial. Appellant filed his notice of appeal from the June 1, 2006, order on June 29, 2006. After appellant filed his notice of appeal and the record had been lodged with this court, appellant settled his claim against Wehrli. The trial court entered an order dismissing purporting to dismiss the claim against Wehrli on October 26, 2006.

On appeal, appellant argues that the trial court abused its discretion in bifurcating the claims and allowing them to be tried separately. We are precluded from reaching the merits of appellant's argument, however, because the judgment entered on appellant's claim against Goriparthi was not a final judgment for purposes of appeal. Our supreme court has held that when separate trials are ordered under Rule 42, there is no final judgment until all of the issues have been resolved and judgment entered on the whole case, unless the judgment is certified pursuant to Ark. R. Civ. P. 54(b). *Barnhart v. City of Fayetteville*, 316 Ark. 742, 875 S.W.2d 79 (1994). There was no Rule 54(b) certification in this case, and further, the order expressly reserved appellant's claims against Wehrli. Therefore, the judgment was not final for purposes of appeal, and any appeal brought from a non-final order is subject to dismissal. *Servewell Plumbing, LLC v. Summit Contractors, Inc.*, 360 Ark. 521, 202 S.W.3d 525 (2005). While appellee asks that we dismiss with prejudice, we decline to do so because the trial court entered its order purporting to dismiss appellant's claim against Wehrli after the record was lodged with this court. *See Myers v. Yingling*, 369 Ark. 87, ___ S.W.3d ___ (2007) (holding that the circuit court loses jurisdiction over the parties and the subject matter in

controversy once the record is lodged in the appellate court). Accordingly, we dismiss, and we do so without prejudice.

Dismissed.

BIRD and MARSHALL, JJ., agree.