

EN BANC

CA06-1260

September 26, 2007

SONDRA ROBERTS, ET AL.,
APPELLANTS

AN APPEAL FROM ARKANSAS COUNTY
CIRCUIT COURT
[NO. CV2004-76]

v.

GRANT BUTLER
APPELLEE

HONORABLE DAVID HENRY
CIRCUIT JUDGE

DISMISSED

Appellants appeal from an order quieting title in certain real property to appellee Grant Butler. Because all claims in the case have not been adjudicated, the order is not final, and we dismiss the appeal.

Appellants are heirs of the late Laura and Christopher Butler. After Laura and Christopher died, each of their five children—Horace, Mattie, Roscoe, Shirley, and Rosene—inherited a one-fifth interest in a tract of land. Horace died in 1986, and his siblings believed that he had no children. Over time, Horace’s siblings passed away, leaving appellants as heirs to the property.

On October 14, 2004, appellee sued appellants, claiming to be the son of Horace Butler and seeking Horace’s one-fifth interest in the land. Appellee also alleged that appellants “possessed extensive personal cash and assets,” and he sought an accounting for those assets, plus rents on the realty. Appellants answered, denying that appellee was Horace’s son,

affirmatively pleading laches and estoppel, and counterclaiming that they had adversely possessed the land in question.

Following a bench trial, the court ruled that appellee was Horace's son; that he was entitled to an undivided one-fifth interest in the real property; and that he had not lost his claim through laches or adverse possession. However, the court held appellee's claim for rents "in abeyance" and retained jurisdiction to:

receive such evidence as [appellee] may wish to submit regarding rents and profits accruing within three (3) years prior to the filing of this action, and likewise, the Court will consider any evidence that [appellants] may wish to present regarding offsets against [appellee], such as contributions for payment of real estate taxes.

The court ruled that these additional claims must be pled within sixty days. No ruling was made regarding the cash or personalty that appellee alleged had been appropriated by appellants.

The question of whether an order is final is a jurisdictional question, which we will raise on our own even if the parties do not. *Strack v. Cap. Servs. Group, Inc.*, 87 Ark. App. 202, 189 S.W.3d 484 (2004). When more than one claim for relief is presented in an action, the trial court may direct entry of a final judgment as to one or more but fewer than all of the claims 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. Ark. R. Civ. P. 54(b)(1). In the event the court so finds, it shall execute a Rule 54(b) certificate that sets forth the factual findings upon which the determination to enter a final judgment is based. *See id.* Absent the executed certificate, an order that adjudicates fewer than all the claims in an action is not a final, appealable order. *See* Ark. R. Civ. P. 54(b)(2).

The order in the present case recited that, following its entry, additional evidence would be accepted and additional claims for rents, profits, and offsets would be adjudicated. When an order reflects that further proceedings are pending that do not involve merely collateral matters, it is not a final order. See *Villines v. Harris*, 362 Ark. 393, 208 S.W.3d 763 (2005); *Smith v. Smith*, 337 Ark. 583, 990 S.W.2d 550 (1999). The order also did not address appellee's claims for cash and personalty. An appealable order must dispose of all claims in the complaint. See generally *Strack, supra*. Finally, the order contains no Rule 54(b) certificate allowing an appeal at this point. Therefore, the order is not final, and we dismiss the appeal without prejudice.

Dismissed without prejudice.