

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

EN BANC

CA 07-761

DECEMBER 12, 2007

EDWARD JONES

APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CV 06-10058]

V.

HONORABLE RAYMOND C.
KILGORE, JUDGE

C&O AUTO SALES

APPELLEE

DISMISSED

Appellant, Edward Jones, appeals from the circuit court's order denying his motion for summary judgment. Because the denial of summary judgment is not a final, appealable order as required by Arkansas Rule of Appellate Procedure—Civil 2 and Arkansas Rule of Civil Procedure 54(b), we dismiss this appeal without prejudice.

In his complaint filed September 1, 2006, appellant contended that he purchased a 1989 Cadillac El Dorado from appellee; that this vehicle later was impounded by the Little Rock Police Department; that, when he attempted to retrieve the vehicle, he was unable to do so because the vehicle had not been registered; and that, when he went to register the vehicle with the Arkansas Department of Finance and Administration, he was informed that

the vehicle had two liens filed against it. Appellant sought damages for appellee's failure to deliver clear title and register his vehicle when it sold it to him.

Appellee filed a motion to dismiss the complaint. Subsequent pleadings were filed by the parties, and, on February 26, 2007, appellant moved for summary judgment, contending that appellee had admitted to selling the vehicle to him illegally. Appellee responded, and after a hearing on appellant's summary judgment motion, the court entered an order denying summary judgment. Appellant then appealed that order.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure-Civil provides that an appeal may be taken only from a final judgment or decree entered by the trial court. Arkansas Rule of Civil Procedure 54(b) provides in relevant part:

[A]ny judgment, order, or other form of decision, however designated, which adjudicates fewer than all of 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, and the judgment, order, or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all of the parties.

Ark. R. Civ. P. 54(b)(2).

The denial of a motion for summary judgment is not an appealable order. *See Fratesi v. Fogleman*, 72 Ark. App. 1, 32 S.W.3d 38 (2000); *see also Amalgamated Clothing & Textile Workers Int'l Union v. Earle Indus., Inc.*, 318 Ark. 524, 886 S.W.2d 594 (1994); *Daniels v. Colonial Ins. Co.*, 314 Ark. 49, 857 S.W.2d 162 (1993). The question of whether an order is final and subject to appeal is a jurisdictional question that this court will raise on its own. *Ver Weire v. CNA Fin. Corp.*, 92 Ark. App. 353, 213 S.W.3d 646 (2005); *see also*

Jones v. Huckabee, 363 Ark. 239, 213 S.W.3d 11 (2005); *Moses v. Hanna's Candle Co.*, 353 Ark. 101, 110 S.W.3d 725 (2003).

Here the denial of the summary judgment that appellant appeals from is not a final order. Although a trial court may enter a final judgment, even in the absence of a resolution of all claims, by including an appropriate certificate in its order as set forth in Ark. R. Civ. P. 54(b)(1), a Rule 54(b) certification was not entered by the trial court in this case.

Therefore, this appeal is dismissed without prejudice and appellant's pending motion before this court to produce the docket is moot.

Appeal dismissed.