ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION II

CA 07-97

SEPTEMBER 26, 2007

REVING BROUSSARD III, et al. APPELLANTS	APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT [NO. CV2005-326]
V.	HONORABLE CHARLES CLAWSON, JUDGE
GUY JONES APPELLEE	DISMISSED

This appeal comes from a judgment in favor of appellee Guy Jones for $134,088 in compensatory damages, plus $100,000 in punitive damages against each of the six appellants. We dismiss for lack of a final order.

The unusual nature of this case requires us to set forth more facts than we ordinarily would in a dismissal opinion. On May 3, 2005, appellee filed a pro se lawsuit against appellants in Faulkner County Circuit Court. He stated that he and appellants belonged to an unincorporated association called the Southern Social Club and that he had been removed without notice "as an owner of the group web site." He requested a full accounting of the club's assets and liabilities, a pro-rata disbursal of the club's assets, or, alternatively, a judgment for his pro-rata share. He also claimed that appellant Broussard "held [him] up as being dishonest [and] attacked his credibility" in front of others; that appellants disclosed private

information to persons not associated with the club; and that appellants "pursued a course of conduct that is invasive of an individual's right to privacy and a breach of the right to privacy . . . predicated upon untruths and misrepresentations . . . ." No facts were pled regarding the nature of the club or the substance of appellants' alleged disclosures or representations. In his prayer for relief, appellee sought an accounting; a determination of the value of the club; an order requiring that club assets to be sold and divided among the owners; a "determination of liability" regarding appellants' conduct; and the imposition of punitive damages.[1] Appellants, through their attorney Doc Irwin, timely answered the complaint and sought a more definite statement.

Appellee propounded discovery to appellants, but, on July 1, 2005, he moved for sanctions based on appellants' failure to timely respond. Before a hearing could be held, Doc Irwin died, and his files were taken over by his son, Seth Irwin. Seth Irwin appeared at the hearing on the motion for sanctions, and, based on the circumstances of Doc Irwin's death, the court allowed appellants until October 17, 2005, to respond to discovery. Appellants then filed responses on October 7 and 17, 2005.

On April 6, 2006, appellee propounded a second set of interrogatories to appellants and filed a "Motion for Sanctions or to Compel Discovery." Appellee claimed that appellants failed to sign the answers to the previous interrogatories and that their answers were

[1]Appellee also sought payment of a $300 balance due on a car he sold two of the appellants. That claim was later resolved in appellee's favor by a partial summary judgment and is not at issue in this appeal.

incomplete and evasive. The record contains a copy of a letter that appellee sent to Seth Irwin, notifying him that a hearing was set for July 19, 2006.

Appellee appeared at the July 19 hearing, but Seth Irwin did not. The trial judge stated that he would give appellants twenty days to answer discovery "fully and completely." An order was entered on July 19, 2006, directing appellants to respond. Although the order set no deadline, it stated that failure to comply would subject appellants to all sanctions permitted under the Rules of Civil Procedure, including the striking of appellants' pleadings and the entry of judgment in favor of appellee. The record contains a letter by which appellee sent the order to Seth Irwin.

By August 10, 2006, appellee had received no additional responses to discovery, so he filed another Motion for Sanctions, asking the court to strike appellants' answer and enter judgment in his favor. A hearing was apparently set on the motion, but the record contains no document showing that notice of the hearing was sent to Irwin.

A hearing was in fact held on October 3, 2006. Neither Irwin nor any of the appellants appeared. Appellee appeared, however, and the court permitted him to testify as to damages. Appellee described the Southern Social Club as an "adult entertainment organization" owned by him and appellants as an unincorporated association from October 2004 until his ouster in April 2005. He said that the right to privacy in the club was important and that appellants breached that right. He admitted several emails into evidence that contain a number of vulgarities and insults. However, he did not elaborate on the meaning of the emails, who sent

and received them, or how they applied to him. Nevertheless, he told the court that reasonable damages for defamation and breach of privacy would be $25,000.

Appellee also testified that the club had generated income and accumulated assets in the past and would continue to do so in the future. He stated that, after he was ousted from the club, appellants neglected to provide an accounting. He therefore sought damages for transportation services he had provided to the club, plus his share of the club's past and future income and asset acquisitions. Appellee's testimony regarding the club's income and assets was, to say the least, difficult to follow. In all, he said, his damages (including the $25,000 tort damages) amounted to $167,610, which, for reasons unknown, he reduced by twenty percent to $134,088. He also requested punitive damages of $100,000 from each appellant.

In an order entered the same day, the court ruled that, as a result of appellants' disregard of discovery orders and failure to attend hearings, their pleadings would be stricken and "the allegations of Plaintiff are taken as true." The court then awarded appellee the damages he requested at the hearing.

Once appellants received word of the judgment, they filed timely motions to set it aside pursuant to Ark. R. Civ. P. 60(a). They argued that they had not been informed of the hearing and that their counsel was ineffective. At a hearing on the motions, appellee told the court that he had "absolutely" notified Seth Irwin of all proceedings. The court then denied the Rule 60 motions, and this appeal followed.

Appellants argue, as they did in their motions to set aside, that the judgment should be vacated due to lack of notice and ineffective assistance of counsel. They also argue (as they

did not in their motions to set aside) that the damage awards are either excessive or not supported by the evidence. We are unable to reach the merits of appellants' arguments because the court's judgment failed to dispose of all claims and specifically reserved jurisdiction for certain purposes.

The October 3, 2006 judgment states that the court "specifically reserves jurisdiction for further identification of the defendants . . . considering the information supplied by said Defendants in their partial answers to discovery requests as may be needed or required to meet any objections or contentions of any Defendant concerning their identity or proper 'legal' name or other issue related thereto." The judgment also recites that appellants had failed to fully respond to appellee's discovery requests concerning an accounting, and the court "reserves and retains jurisdiction to address this subject matter at a later time or in the event claims and demands are made upon Plaintiff by any state or federal authority for reports, accounting or other action . . . ."

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. *Epting v. Precision Paint & Glass Co.*, 353 Ark. 84, 110 S.W.3d 747 (2003). 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). That was not done here. The judgment failed to dispose of all of appellee's claims and reflected that further proceedings were pending. It therefore was not a final,

appealable 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); *Strack v. Cap. Servs. Group, Inc.*, 87 Ark. App. 202, 189 S.W.3d 484 (2004). It follows that the court's refusal to set the judgment aside—thus leaving the judgment intact—was likewise not final.[2]

Based on the above, the appeal is dismissed without prejudice. In the interest of judicial economy, we make the following observations for the benefit of the parties and the trial court. If this appeal should be re-filed, appellants are directed to Ark. Sup. Ct. R. 4-2(a)(8) governing the contents of an Addendum. The Addendum must include all relevant documents and exhibits necessary to an understanding of the case. The emails that seemingly formed the basis of appellee's tort claims were not included in appellant's Addendum, and they should be. We also observe that, as the case now stands, a non-final order has been entered by the trial court. If a final judgment is later entered, appellants may seek whatever post-judgment relief the law allows and assert therein whatever arguments they deem warranted, including any attacks on the state of the evidence or other matters.

Dismissed.

PITTMAN, C.J., and GLADWIN, J., agree.

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[2] We recognize that an appeal may be taken from an order that strikes an answer, Ark. R. App. P.–Civ. 2(a)(4), and that an appellate court will rule on issues dependent on the stricken answer. *See Arnold & Arnold v. Williams*, 315 Ark. 632, 870 S.W.2d 365 (1994); *Arnold Fireworks Display, Inc. v. Schmidt*, 307 Ark. 316, 820 S.W.2d 444 (1991). However, the issues preserved by appellants in this case, unlike those in *Williams* and *Schmidt*, focus on notice and effectiveness of counsel rather than the effect of a stricken answer.