ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 08-105

	Opinion Delivered OCTOBER 22, 2008
JOHN T. PAYNE, II APPELLANT	APPEAL FROM THE CHICOT COUNTY CIRCUIT COURT, FOURTH DIVISION [NO. CV2006-136-4]
V.	
KEITH DONALDSON d/b/a DONALDSON WRECKER SERVICE APPELLEE	HONORABLE DON GLOVER, JUDGE DISMISSED

JOHN B. ROBBINS, Judge

This case concerns the recovery of a 2004 Yamaha Grizzly 660 four-wheeler (hereinafter "ATV") by the original owner from the towing and storing company. This particular ATV was towed and stored on July 19, 2006, at the request of the Chicot County Sheriff's Department in a stolen-property case, and appellant owner John T. Payne sought to retrieve it. Appellee Keith Donaldson d/b/a Donaldson Wrecker Service would not release the ATV prior to full payment for what it believed it was owed for towing and storage services. Donaldson asserted a possessory lien for services rendered.

The essential question at the trial court level was the reasonable number of days owed for storing. In earlier proceedings not challenged on appeal, the trial judge in Chicot County Circuit Court determined that $250 was owed for towing, and $25 per day was owed for storage. Those rates were never a contested issue and were finalized in an order entered in

May 2007. In June 2007, appellant tendered $325, representing towing and three days' storage, for which he received credit but not possession of his ATV.

The parties came back before the trial judge arguing their respective positions on the number of days of storage due. Appellant conceded that he owed a minor amount for recovery of his ATV and keeping it until he was notified, but he disagreed that the tremendous amount accrued under the daily rate was proper. Appellant's attorney argued that, at the most, appellant would owe towing and up to eight days of storage. Appellee would not release the ATV, asserting that it was due to be paid for every day that storage services were rendered, and in the alternative, appellee asked that it be granted permission to publicly sell the ATV in effort to collect on its lien and seek the remainder from appellant.

After a hearing on August 8, 2007, the judge found in favor of appellee, entering judgment for a total of $10,636.25, plus $25 per day plus tax until appellant claimed the ATV or it was disposed of at sale. The judgment further provided that:

> Payne [appellant] shall have thirty (30) days from the date of entry of this order to reclaim the ATV, and that if Payne has not reclaimed the ATV by that date, Donaldson [appellee] shall cause a notice of public sale to be published one (1) time in a newspaper of general circulation in Chicot County, Arkansas and sell no later than 45 days following the entry of this order the ATV at public sale for cash. Donaldson shall be allowed to bid on the ATV at the sale should he desire. Following the sale of the ATV, Donaldson shall deduct expenses necessary for publication and other sale costs from the proceeds of the sale, applying any amount above in excess of such expenses to the outstanding balance of the judgment set forth herein.

The judgment was filed on August 29, 2007. Thereafter, appellant filed a motion for new trial, to which appellee replied, and which motion was denied by the trial court. The motion

for new trial focused on the perfection of the towing company's lien concerning proper notice, or lack thereof. A timely notice of appeal followed that denial.

On appeal, appellant asserts that the trial court erred as a matter of law because absent timely written notice with proper information, the towing company was not entitled to a judgment against him; that basic fairness would prevent the owner of a stolen vehicle to be saddled with an exorbitant storage charge; and that the trial court abused its discretion in denying his motion for new trial because he was denied a fair opportunity at trial to develop the lack-of-statutory-notice issue. Appellee responds to each argument asserting that no trial error occurred.

Because we do not have a final order on appeal, we dismiss for lack of jurisdiction. For a judgment to be final, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *See Roberts v. Roberts*, 70 Ark. App. 94, 14 S.W.3d 529 (2000). It must settle the issue as a matter of law, but it must also put the court's directive into execution, ending the litigation or a separable branch of it. *Morton v. Morton*, 61 Ark. App. 161, 965 S.W.2d 809 (1998). The amount of a final judgment must be computed, as near as possible in dollars and cents. *See also Office of Child Support Enforcement v. Oliver*, 324 Ark. 447, 921 S.W.2d 602 (1996); *Estate of Hastings v. Planters & Stockmen Bank*, 296 Ark. 409, 757 S.W.2d 546 (1988); *Thomas v. McElroy*, 243 Ark. 465, 420 S.W.2d 530 (1967). It is not sufficient that an order states a formula by which damages may be calculated. *See Villines v. Harris*, 362 Ark. 393, 208 S.W.3d 763 (2005). The

judgment should state the amount that the defendant is required to pay. *Thomas*, *supra*. *See also Allen v. Allen*, 99 Ark. App. 292, __ S.W.3d __ (2007).

In this case, the amount appellant would owe under the judgment is uncertain inasmuch as the number of days elapsing before appellant reclaimed the ATV is not known, whether appellant will reclaim at all is not known, and the publication costs and other costs of attempting to sell the ATV are unknown. The judgment contemplated future action to arrive at a certainty of the judgment amount. This is simply too tenuous to be a final judgment for purposes of appeal.

Appeal dismissed.

MARSHALL and VAUGHT, JJ., agree.