Cite as 2012 Ark. App. 341

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-1072

	Opinion Delivered May 16, 2012
RAJU PATIL, M.D. APPELLANT	APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT [NO. 23 CV-2010-1171]
V.	HONORABLE MICHAEL A. MAGGIO, JUDGE
GARY KEVIN HOOVER APPELLEE	APPEAL DISMISSED

JOHN MAUZY PITTMAN, Judge

This is an appeal from an order in a medical-malpractice action granting plaintiff-appellee's motion to dismiss without prejudice and denying defendant-appellant's motion to dismiss with prejudice. The dispute concerns whether the statute of limitations had run on appellee's malpractice action given that he filed the complaint before the statute of limitations ran on January 20, 2009, but failed to complete service on appellant by that date, instead obtaining an order extending the time for service. The order appealed from is quoted in full:

> Came on to be heard on Plaintiff's Motion to Dismiss Without Prejudice and the Motion to Dismiss With Prejudice of Defendant Raju Patil, M.D. The Court, having reviewed the evidence and heard the arguments of counsel, finds the Plaintiff's Motion to Dismiss is within the discretion of the Court and that the Motion to Extend the Time to Serve was proper.
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> Therefore, the Motion to Dismiss With Prejudice of Defendant Raju Patil, M.D. is denied and the Motion to Dismiss of Plaintiff is granted.

Appellant asserts that the order extending the time for service was erroneously granted because it was untimely and because good cause warranting an extension of time was lacking, and argues that his motion to dismiss with prejudice should therefore have been granted. We dismiss the appeal for want of a final, appealable order.

The order quoted above is in fact two orders. The first order grants appellee's motion to take a voluntary nonsuit. The second denies appellant's motion to dismiss. Neither is appealable.

Appellant concedes that our supreme court has expressly held that a voluntary nonsuit is not an order from which an appeal will lie. However, he cites cases purportedly showing that the supreme court has not consistently followed this holding in practice and argues that we should follow the supreme court's example rather than its holdings. This we cannot do. We are without authority to overrule our supreme court's precedent. *See, e.g.*, *Selrahc Limited Partnership v. Seeco Inc.*, 2009 Ark. App. 865; *Moore v. State*, 2009 Ark. App. 863; *Roark v. State*, 46 Ark. App. 49, 876 S.W.2d 596 (1994); *Leach v. State*, 38 Ark. App. 117, 831 S.W.2d 615 (1992). When expressly considering the issue, the supreme court has consistently held that no appeal will lie from a voluntary nonsuit because the defendant-appellant has in fact prevailed, and because any defenses available to the appellant will not be foreclosed but will instead be available in any refiled case. *Carroll v. Baker*, 2011 Ark. 98; *Beverly Enterprises–Arkansas, Inc. v. Hillier*, 341 Ark. 1, 14 S.W.3d 487 (2000); *Cowan v. Schmidle*, 312 Ark. 256, 848 S.W.2d 421 (1993). Consequently, appellant cannot appeal from that portion of the order granting appellee's request for a voluntary nonsuit.

Nor will an appeal lie from that portion of the trial court's order denying appellant's motion to dismiss with prejudice. The supreme court has consistently held that an order denying a motion to dismiss is not a final judgment from which an appeal will lie. *Cigna Insurance Co. v. Brisson*, 294 Ark. 504, 744 S.W.2d 716 (1988); *Roberts Enterprises, Inc. v. Arkansas State Highway Commission*, 277 Ark. 25, 638 S.W.2d 675 (1982); *Wicker v. Wicker*, 223 Ark. 219, 265 S.W.2d 6 (1954); *Epperson v. Biggs*, 17 Ark. App. 212, 705 S.W.2d 901 (1986). Consequently, there is nothing before us to review, and we dismiss the appeal.

Appeal dismissed.

GLADWIN and BROWN, JJ., agree.