

ARKANSAS COURT OF APPEALSDIVISION II
No. CA11-282

JANINE MURPHREE et al.

APPELLANTS

V.

GIRAFFE TREE SERVICE, INC.

APPELLEE

Opinion Delivered NOVEMBER 30, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
NINTH DIVISION
[NO. CV-2010-5121]HONORABLE MARY SPENCER
McGOWAN, JUDGE

APPEAL DISMISSED

JOSEPHINE LINKER HART, Judge

Appellee, Giraffe Tree Service, Inc., filed a complaint and motion for immediate relief alleging that Janine Murphree and Franklin Tyre violated their respective noncompetition and confidentiality agreements they entered into with appellee. Appellee sought injunctive relief, the return of certain property and proprietary information, and damages. The court entered an ex parte order granting an injunction and immediate relief, with a hearing to follow at any party's request. Following that hearing, the circuit court, in an order entered December 7, 2010, refused to lift the injunction, enforced the noncompetition agreements, and ordered the return of property and information. The order, however, did not address appellee's claim for damages. Appellants lodged their record with this court on March 21, 2011.

We must first address whether the court's December 7, 2010 order is appealable. Here, the order continued an injunction, but the issue of damages remains unresolved. A judgment

is not final and appealable if the issue of damages remains to be decided. *U.S. Bank v. Milburn*, 352 Ark. 144, 100 S.W.3d 674 (2003). Nevertheless, our appellate rules provide that an “appeal may be taken from a circuit court . . . from . . . [a]n interlocutory order by which an injunction is granted, continued, modified, refused, or dissolved, or by which an application to dissolve or modify an injunction is refused.” Ark. R. App. P.–Civ. 2(a)(7) (2011). Because this is an appeal from an injunction, appeal was proper, as specific authority for an appeal from an injunction should control over the absence of finality in the court’s order. *East Poinsett Cnty. Sch. Dist. No. 14 v. Massey*, 317 Ark. 219, 876 S.W.2d 573 (1994).

When an appeal is taken from an interlocutory order involving an injunction, however, the record must be lodged with the clerk within thirty days from the entry of the order. Ark. R. App. P.–Civ. 5(a) (2011); see *Johnson v. Langley*, 93 Ark. App. 214, 218 S.W.3d 363 (2005). Here, the record should have been lodged within thirty days from the December 7, 2010 order, but it was not lodged until March 21, 2011, well beyond thirty days. Because the record was not lodged within thirty days from the entry of the order, we must dismiss the appeal.¹

Appeal dismissed.

GLOVER and MARTIN, JJ., agree.

¹On December 22, 2010, appellants filed a motion for relief from the December 7, 2010 order. Even assuming that the December 22, 2010 motion was, on January 21, 2011, “deemed denied by operation of law as of the thirtieth day,” Ark. R. App. P.–Civ. 4(b)(1), the record still was not lodged within thirty days of January 21, 2011.