

**ARKANSAS COURT OF APPEALS**DIVISION IV  
No. CA12-296CINDY DINGLER, AS  
ADMINISTRATOR OF THE ESTATE  
OF BILLY REESE DINGLER, SR.,  
DECEASED

APPELLANT

V.

VAN BUREN H.M.A., INC.,  
FORMERLY D/B/A CRAWFORD  
MEMORIAL HOSPITAL, NOW D/B/A  
SUMMIT MEDICAL CENTER; DR.  
GREGORY TERRELL; ABC  
CORPORATION OR LIMITED  
LIABILITY COMPANY; JANE DOE  
NOS. 1-5; AND JOHN DOE NOS. 1-5

APPELLEES

**Opinion Delivered** November 7, 2012APPEAL FROM THE CRAWFORD  
COUNTY CIRCUIT COURT  
[NO. CV-2010-270-(II)]HONORABLE MICHAEL MEDLOCK,  
JUDGE

DISMISSED WITHOUT PREJUDICE

**RITA W. GRUBER, Judge**

Cindy Dingler, as administrator of the estate of Billy Reese Dingler, Sr., deceased, appeals the dismissal of this medical-malpractice suit against Van Buren Hospital HMA, Inc. Appellant contends that the court erred by dismissing the complaint for deficiencies in the summons rather than allowing her to amend and correct such deficiencies. We dismiss the appeal for lack of a final order.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil permits an appeal only from a final judgment or decree of a circuit court. A final order dismisses the parties, discharges them from the action, or concludes their rights to the subject matter in

controversy. *Aceva Techs., LLC v. Tyson Foods, Inc.*, 2012 Ark. App. 382. See also Ark. R. App. P.–Civ. 3(e)(vi) (2012) (requiring an appellant or cross-appellant to state in its notice of appeal that it is abandoning any pending but unresolved claims).

Under Rule 54(b) of the Arkansas Rules of Civil Procedure, an order is not final when it adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties.

*Bulsara v. Watkins*, 2010 Ark. 453. Rule 54(b) states in relevant part:

(1) *Certification of Final Judgment.* When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties 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. . . .

. . . .

(2) *Lack of Certification.* Absent the executed certificate required by paragraph (1) of this subdivision, any judgment, order, or other form of decision, however designated, which adjudicates fewer than all 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.

Whether an order has been properly appealed pursuant to Rule 54(b) of the Arkansas Rules of Civil Procedure is a jurisdictional question that the appellate court may raise sua sponte.

*Jackson v. Sparks Reg'l Med. Ctr.*, 375 Ark. 533, 294 S.W.3d 1 (2009).

In the present case, on October 4, 2004, appellant filed a suit for wrongful death and medical malpractice against the following defendants: Dr. Lonnie Harrison; Van Buren HMA, Inc., d/b/a Crawford Memorial Hospital; Dr. Gregory Terrell; ABC Corporation or Limited Liability Company; Jane Doe Nos. 1–5; and John Doe Nos. 1–5. A voluntary dismissal was

entered on April 24, 2009. Appellant refiled her complaint on April 23, 2010.

On February 17, 2011, appellee Van Buren Hospital HMA, Inc., filed a motion to dismiss in which it alleged that the circuit court lacked jurisdiction over it because of insufficiency of process regarding the summons. In an order of dismissal entered on December 16, 2011, the circuit court found that there was insufficiency of process and that because of the defective summons, the court lacked jurisdiction over Van Buren HMA, Inc. Pursuant to Arkansas Rule of Civil Procedure 41(b), the court granted the dismissal with prejudice because it was the second dismissal of the case. In a January 3, 2012 amended order, the court restated its lack of jurisdiction because of insufficiency of process against Van Buren HMA, Inc., and again ordered dismissal with prejudice.

An appellant's record and addendum should contain any document essential for the appellate court to confirm its jurisdiction, understand the case, and decide the issues on appeal. *Aceva, supra* (citing Ark. Sup. Ct. R. 4-2(a)(8)(A)(i) (2011)). Here, there is neither a Rule 54(b) certificate in the record nor an order dismissing Dr. Terrell, ABC Corporation or Limited Liability Company, or the Jane and John Does.<sup>1</sup> Appellant's notice of appeal does not contain a statement that she is abandoning all pending but unresolved claims. We have no jurisdiction to hear this case, and we therefore dismiss.

Dismissed without prejudice.

GLADWIN and GLOVER, JJ., agree.

*James R. Filyaw*, for appellant.

*Ledbetter, Cogbill, Arnold & Harrison, LLP*, by: *J. Michael Cogbill* and *Rebecca D. Hattabaugh*, for appellee.

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<sup>1</sup>While an exception exists for named but unserved defendants, we are unable to determine from the record whether the Jane or John Does were served. See Ark. R. Civ. P. 54(b)(5).