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Cite as 2013 Ark. App. 302

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-656

CITY OF JACKSONVILLE, ARKANSAS APPELLANT V. GRAHAM DEWITT NIXON, WALTER W. NIXON, III, and DANA NIXON APPELLEES	OPINION DELIVERED MAY 8, 2013 APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FIFTH DIVISION [NO. CV-10-5486] HONORABLE WENDELL GRIFFEN, JUDGE DISMISSED

ROBERT J. GLADWIN, Chief Judge

In this eminent-domain action, appellant City of Jacksonville, Arkansas (City), condemned portions of land for highway construction referred to as the Graham Road Project (Project), and appellees Graham Dewitt Nixon, Walter W. Nixon, III, and Dana Nixon (Nixons) responded, seeking more compensation than the City offered. After a bench trial, the Nixons were awarded a total of $73,868.84 in a judgment filed April 3, 2012, in the Pulaski County Circuit Court. On appeal, the City argues that appellate jurisdiction exists, despite the circuit court's errors, and that the circuit court erred in failing to grant the City's motion for reconsideration. Because we are without jurisdiction, we dismiss for lack of a final order.

On September 17, 2010, the City filed an application for condemnation of real property and request for immediate possession. Based on eminent domain, Arkansas Code

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Annotated section 18-15-201 (Repl. 2003), the City sought partial condemnation of twelve parcels of property that had frontage on Graham Road for the purpose of developing a four-lane road with sidewalks and replacement and relocation of utility lines. The Nixons, among others, were named as defendants due to their interests in certain real property affected by the Project. The first order of immediate possession was filed on September 28, 2010.

An amended application was filed on April 8, 2011, which named the Arkansas Highway and Transportation Department (AHD) as an "interested party," asserting that AHD was a necessary party because of its interest and role in the physical and fiscal administration of the Project.[1] On May 5, 2011, AHD filed a motion to dismiss the City's attempted joinder of AHD as an "interested party," claiming sovereign immunity. That motion to dismiss was denied by order filed May 31, 2011.

An amended and agreed order of immediate possession was filed on May 31, 2011, wherein the Nixons agreed that the City had the right and the authority to take immediate possession of their property, but preserved adjudication of their additional claims.[2] After all other defendants had resolved their compensable damages with the City, a bench trial to adjudicate just compensation for the Nixons began on February 13, 2012, and ended on February 24, 2012.

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[1]Arkansas Rules of Civil Procedure 19 and 20 (2012) provide for more than one person to be included as a plaintiff or as a defendant, or even as an involuntary plaintiff, but there is no provision for an entity to be joined as an "interested party" under the Rules.

[2]The agreed order also preserves the claims for defendants Bridgette and Robert S. Van Nostrand, who settled their claim prior to the hearing. However, no order is provided in the addendum of appellant's brief to reflect the settlement of the Van Nostrands' claim.

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The circuit court entered judgment on April 3, 2012, finding that the City had deposited $23,825 into the registry of the court for condemnation of the Nixons' property and that the Nixons had previously withdrawn that amount under court order. However, the circuit court also determined that just compensation for the Nixons' property totaled $73,868.84, and gave judgment accordingly. The City then filed a timely motion for reconsideration on April 12, 2012, requesting that the circuit court enter an amended final order for the total amount of $23,825, arguing in its motion that (1) Arkansas law does not authorize compensable damages for an award to replace a "living fence"; (2) the assessment of permanent-easement valuation cannot, under Arkansas law, be determined by "splitting the difference" between two valuations as the circuit court did; and (3) under Arkansas Rule of Civil Procedure 59 (2012), there was an irregularity in the proceedings, error in the assessment of the amount of recovery, and the judgment was clearly contrary to the preponderance of the evidence. The City's supporting brief noted that AHD was an "interested party" and that the judgment by the circuit court did not include a paragraph noting a release of AHD or one noting that the judgment was a final order. The circuit court failed to rule on the motion, which was deemed denied as of May 12, 2012. The City filed a timely notice of appeal, and this appeal followed.

Our supreme court stated in *Bayird v. Floyd*, 2009 Ark. 455, at 3, 344 S.W.3d 80, 83, as follows:

> This court only reviews final orders. Ark. R. App. P.–Civ. 2(a). For an order to be final and appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Quality Ford, Inc. v. Faust*, 307 Ark. 371, 820 S.W.2d 61 (1991). It is not enough to dismiss

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> some of the parties; the order must cover all parties and all claims in order to be final and appealable. *State Farm Mut. Auto. Ins. Co. v. Thomas*, 312 Ark. 429, 850 S.W.2d 4 (1993). However, [Arkansas] Rule [of Civil Procedure] 54(b) provides that a trial court may direct the entry of final judgment with regard to fewer than all of the claims or parties by an express determination that there is no just reason for delay and by the requisite certification and factual findings. When an appropriate certification is made by the trial court pursuant to Rule 54(b), this court considers the judgment final for purposes of appeal. *See id.* (citing *Arkhola Sand & Gravel Co. v. Hutchinson*, 291 Ark. 570, 726 S.W.2d 674 (1987)).

The City claims that appellate jurisdiction does exist, despite AHD having never been dismissed from the lawsuit and the final order not mentioning AHD. It argues that the City neither asserted nor requested relief against AHD, naming it only because of its "duty and responsibility to administer and monitor the federal funds assigned to said Project." The City states that the circuit court's judgment is flawed, but that it satisfies finality requirements by "final resolution of the litigation." The City argues that this case is distinguishable from *Thomas v. City of Fayetteville*, 2012 Ark. 120, at 5–6, where our supreme court dismissed the appeal due to lack of finality, reasoning as follows:

> The order of the circuit court decided the issue of whether the City could rightfully exercise eminent domain to condemn a portion of Thomas's property for use in constructing a bike trail, but the circuit court has not yet addressed the issue of the landowner's right to just compensation and the amount of damages. There is neither a final order nor a Rule 54(b) certification.

The City urges this court to conclude that the circuit court's failure to dismiss AHD does not eliminate the judgment's finality because the judgment addressed the question of both eminent domain and just compensation for the subject lands. The Nixons agree, stating that the April 3, 2012 order is final and appealable. However, neither party addresses the lack of compliance with Arkansas Rule of Civil Procedure 54(b). Without the circuit court's

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certification of finality, and in light of its ruling, which specifically denied AHD's motion to dismiss, we are forced to dismiss this case under Rule 54.

We note that, if this case is resubmitted once a final order is obtained, appellant's addendum is inadequate under our rules. Arkansas Supreme Court Rule 4-2(a)(8) (2012) provides that the appellant's brief shall contain an addendum, which shall contain true and legible copies of the non-transcript documents in the record on appeal that are essential for the appellate court to confirm its jurisdiction. The agreed order filed on May 31, 2011, preserves for the Nixons and the Van Nostrands adjudication on their claims for compensation. However, nowhere in the addendum is the order settling the Van Nostrands' claim, which is required for this court to confirm its jurisdiction. Therefore, appellant is encouraged to review our rules, as well as the record and addenda, to ensure that no other deficiencies are present if another appeal is filed.

Dismissed.

PITTMAN and VAUGHT, JJ., agree.

Robert E. Bamburg, for appellant.

Giles Law Firm. P.A., by: *Stephen Giles*, for appellees.