

ARKANSAS COURT OF APPEALSDIVISION III
No. CA12-730

ROBERT FUREIGH

APPELLANT

V.

MICHAEL G. HORN and W.M.
HOGAN

APPELLEES

Opinion Delivered May 1, 2013APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SECOND DIVISION
[NO. 60CV-10-4178-2]HONORABLE CHRISTOPHER
CHARLES PIAZZA, JUDGE

DISMISSED

RITA W. GRUBER, Judge

Robert Fureigh appeals from the circuit court's order granting a motion for summary judgment filed by appellees, Michael G. Horn and W. M. Hogan. The court dismissed appellant's complaint, which alleged causes of action for defamation, tortious interference with a contractual relationship, and the tort of outrage. We decline to address the merits because the circuit court's order is not a final, appealable order, and we dismiss the appeal without prejudice.

On July 21, 2010, appellant filed a complaint in Pulaski County Circuit Court against appellees, stating that he had been employed by The LPA Group, Inc., as an airport engineer until September 9, 2009, when he was terminated. He contended that sometime before August 2009, he had inquired why "certain airplane owners were not paying taxes to the Pulaski County Tax Collector and the State of Arkansas." He also had asked for tail numbers

of all planes based at the North Little Rock Airport. It is not clear from the complaint to whom these inquiries were directed. Appellant then alleged that appellees campaigned to have him fired from his job, and he attached an August 2010 letter from each appellee to the president and CEO of The LPA Group, in which appellees claimed that appellant was working with the Pulaski County Tax Assessor to assess potentially unfair and burdensome taxes on their airplanes. Appellees expressed outrage in the letters and suggested that appellant's actions might have been retribution for or a vendetta against the pilots because The LPA Group's bid was not awarded a contract to supply engineering services to the North Little Rock Airport. Appellant claimed that appellees' actions interfered with a valid contractual relationship between him and his employer and that the statements were false, improper, and made with malice and in reckless disregard of the consequences.

Appellees responded, filing an answer, counterclaim, and third-party complaint on August 11, 2010. The third-party complaint was brought against The LPA Group and William Eric "Bill" Phillips. Appellees contended in the counterclaim and third-party complaint that appellant, as an agent of The LPA Group, submitted a bid to the North Little Rock Airport Commission to perform work on an upcoming project at the North Little Rock Airport. During the summer of 2009, the Commission awarded the contract to another engineering firm. Appellees alleged that, at that point, appellant and Phillips began a concerted campaign to defame appellees and, with the consent of The LPA Group, made false, defamatory statements to North Little Rock Airport officials and other government officials that appellees and others were participating in a "criminal conspiracy" to avoid

paying sales and property taxes on their aircraft. Asserting additional facts, the counterclaim and third-party complaint alleged a claim for defamation.

On March 18, 2011, pursuant to appellees' oral motion, the circuit court entered an order dismissing without prejudice appellees' third-party complaint against The LPA Group, Inc., but not against William Eric "Bill" Phillips. On November 8, 2011, the circuit court entered an order dismissing without prejudice appellees' counterclaim against appellant. The circuit court entered its order of summary judgment on May 17, 2012, and dismissed appellant's complaint. Appellant filed a notice of appeal from the court's order on June 1, 2012.

Appellees have each filed a motion to dismiss this appeal, arguing that the circuit court's order of May 17, 2012, dismissing appellant's complaint was not a final, appealable order. Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil (2012) provides that an appeal may be taken from a final judgment or decree. A final judgment or decree is one that dismisses the parties, discharges them from the action, or concludes their rights to the subject matter in controversy. *Davis v. Brown*, 2011 Ark. App. 789, at 2. In the absence of a certificate executed in accordance with Arkansas Rule of Civil Procedure 54(b) (which we do not have here), a judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action. Ark. R. Civ. P. 54(b)(2) (2012).

At the time this notice of appeal was filed on June 1, 2012, appellees' third-party complaint against Mr. Phillips was still pending. Thus, the order from which appellant

appealed was not final. We have no jurisdiction to hear an appeal from an order that is not final. *Gartman v. Ford Motor Co.*, 2012 Ark. App. 693, at 3.

Although appellant states in his response to appellees' motions to dismiss that the circuit court entered an order dismissing the third-party complaint against Mr. Phillips on November 14, 2012, effectively "curing" the finality matter, the circuit court's order was entered long after the record was lodged with this court on appeal, a fact appellant concedes. Once the record was lodged in the appellate court, the circuit court lost jurisdiction to dismiss the third-party complaint. *Myers v. Yingling*, 369 Ark. 87, 89, 251 S.W.3d 287, 290 (2007). Actions taken by a court without jurisdiction are null and void. *Id.* at 89–90, 251 S.W.3d at 290. Thus, the third-party complaint against Mr. Phillips remains pending.¹

Accordingly, because the circuit court's summary-judgment order is not a final, appealable order, we grant appellees' motion and dismiss this appeal without prejudice.
Appeal dismissed.

HARRISON and BROWN, JJ., agree.

Ogles Law Firm, P.A., by: *John Ogles*, for appellant.

Hankins Law Firm, P.A., by: *Stuart W. Hankins* and *A. Vaughan Hankins*, for appellee
Michael G. Horn.

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., by: *Suart P. Miller* and *Holly M. Lar*, for appellee W.M. Hogan.

¹We note that appellees moved to voluntarily dismiss their counterclaim against appellant, which the circuit court dismissed without prejudice on November 8, 2011. The counterclaim appears to have arisen out of the same transaction or occurrence as the claims in appellant's complaint. If so, the counterclaim is a compulsory counterclaim. *See* Ark. R. Civ. P. 13(a) (2012). Because appellees had the right to refile the nonsuited counterclaim within one year of the court's November 8, 2011, dismissal under our savings statute—Ark. Code Ann. § 16-56-126 (Repl. 2005)—the court's order entered on May 17, 2012, dismissing appellant's complaint would not have been a final order. *See, e.g., Crockett v. C.A.G. Invs., Inc.*, 2010 Ark. 90, 361 S.W.3d 262; *Killian v. Gibson*, 2011 Ark. App. 245.