

**ARKANSAS COURT OF APPEALS**

DIVISION II

No. CA 12-98

JANE ALLEN HALL

APPELLANT

V.

BOARD OF ADMINISTRATION OF  
THE WILLOW COVE HORIZONTAL  
PROPERTY REGIME, LYNN  
BENNETT, PAT WEBB, DOUG  
THACKER, GLEN MCNEAL, AND  
JOETTA THORNTON

APPELLEES

**Opinion Delivered** November 28, 2012APPEAL FROM THE GARLAND  
COUNTY CIRCUIT COURT  
[NO. CV-2010-345 III]HONORABLE LYNN WILLIAMS,  
JUDGE

DISMISSED WITHOUT PREJUDICE

**DOUG MARTIN, Judge**

Jane Allen Hall appeals from the Garland County Circuit Court's order granting a "directed verdict" to appellees Board of Administration of the Willow Cove Horizontal Property Regime (WCHPR); Lynn Bennett, personally and in his capacity as both the manager and the president of the Board of Administration of the WCHPR; Pat Webb, as a board member; Doug Thacker, as a board member; Joetta Thornton, as a board member; and Glen McNeal, as a board member. Hall argues that the trial court erred in granting a directed verdict and raises several arguments pertaining to interpretation of bylaws and injunctive relief. Because this court lacks jurisdiction to hear the appeal, we dismiss.

The Willow Cove condominium complex was comprised of four buildings, each of which contained four condominium units with a separate entrance to each building. At the

time of these proceedings, Hall had been living in a condominium at the Willow Cove complex for over twenty-eight years. On February 20, 2010, a special meeting was called for owners in the complex to discuss a proposal to install an electronic security gate. Ten owners voted in favor of the project; three owners voted against the proposal; and three owners were absent from the meeting. Although Hall received notice of the meeting, she refused to attend the meeting or give her vote by proxy. Hall opposed installation of the gate because it would result in the closing of the separate entrances.

On March 10, 2010, Hall filed a petition for temporary and permanent injunction and declaratory judgment against the WCHPR Council of Co-Owners; the Board of Administration of the WCHPR; and Lynn Bennett, personally and in his capacity as both the manager and the president of the Board of Administration of the WCHPR. On March 26, 2010, Hall amended her petition, omitting the Council of Co-Owners and adding the names of individual board members. The docket sheet in the record indicates that the named individuals were served with a petition, but it is not clear in what capacity the individuals were served and whether the service pertained to the original or the amended petition.

Following trial, an order entitled “Directed Verdict For All Defendants” was entered on October 13, 2011. Specifically, the trial court granted a directed verdict “against the Plaintiff on all claims and for all Defendants on all claims”; however, the WCHPR Council of Co-Owners was not among the defendants named in the order. Hall filed a timely notice of appeal on November 7, 2011.

The question of whether an order is final and subject to appeal is a jurisdictional question that this court will raise sua sponte. *Delancey v. Qualls*, 2012 Ark. App. 328. Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil provides that an appeal may be taken only from a final judgment or decree entered by the trial court. Under Rule 54(b) of the Arkansas Rules of Civil Procedure, an order is not final that adjudicates fewer than all the claims or rights and liabilities of fewer than all the parties. *S. Farm Bureau Cas. Ins. Co. v. Easter*, 369 Ark. 101, 251 S.W.3d 251 (2007). Our supreme court has held that an order is not a final, appealable order when it does not dispose of the complaints against all of the defendants. *Vimy Ridge Mun. Water Improvement Dist. No. 139 v. Ryles*, 369 Ark. 217, 253 S.W.3d 436 (2007).

Although the trial court purported to enter a directed verdict for all defendants on all claims, the trial court did not attach a Rule 54(b) certificate to its order with respect to the WCHPR Council of Co-Owners. Therefore, we conclude that there is no final, appealable order and that this court lacks jurisdiction to consider Hall's appeal.

We recognize that the Arkansas Supreme Court amended Rule 54(b), effective January 1, 2009, to provide that any claim against a named but unserved defendant is dismissed by the trial court's final judgment or decree. Ark. R. Civ. P. 54(b)(5) (2012). It is, however, unclear from the record whether the WCHPR Council of Co-Owners was served. There is some indication in the record that the Council of Co-Owners appeared and thus

became a party to the action.<sup>1</sup> In *Trakru v. Mathews*, 2011 Ark. App. 750, this court held that, where a defendant appeared and timely answered a complaint, Rule 54(b)(5) did not apply. In *Trakru*, even though the record did not contain a summons for that particular defendant, the defendant became a party when it appeared; therefore, there was no final and appealable order given that the party was not dismissed. *Id.* On the other hand, if the Council of Co-Owners' actions cannot be construed as an appearance, our supreme court has held that the application of Rule 54(b)(5) did not render an order final and appealable where the record failed to demonstrate whether one of several defendants had been served. *Hotfoot Logistics, LLC v. Shipping Point Mktg., Inc.*, 2012 Ark. 76. The *Hotfoot* opinion was silent as to whether the one defendant ever appeared. Therefore, in either case, Rule 54(b)(5) is inapplicable here.

To the extent Hall appeals from the denial of an injunction, which is an interlocutory order pursuant to Arkansas Rule of Appellate Procedure—Civil 2(a)(6) (2012), from which no Rule 54(b) certificate is necessary, we must dismiss for lack of jurisdiction because Hall failed to timely file the record. Arkansas Rule of Appellate Procedure—Civil 5(a) (2012) provides that, when an appeal is taken from an interlocutory order under Rule 2(a)(6), the record must be filed with the clerk of the supreme court within thirty days from the entry of such order. The order from which Hall appeals was entered on October 13, 2011, and the record was not lodged until February 6, 2012, well beyond thirty days. Accordingly, we dismiss on this basis

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<sup>1</sup>For example, a purported member of the WCHPR Council of Co-Owners filed a joint response to Hall's original petition on April 14, 2010; the Council of Co-Owners was named as a defendant in the trial court's order denying Hall's petition for temporary injunction/restraining order on April 23, 2010; and the Council of Co-Owners filed a joint response to Hall's motion for summary judgment on September 20, 2011.

as well. See, e.g., *Murphree v. Giraffe Tree Serv., Inc.*, 2011 Ark. App. 721; *Murphy v. Michelle Smith Designs*, 100 Ark. App. 384, 269 S.W.3d 390 (2007).

Dismissed without prejudice.

PITTMAN and ABRAMSON, JJ., agree.

*Tona M. DeMers*, for appellant.

*Eudox Patterson*, for appellee.