

SUPREME COURT OF ARKANSAS

No. 11-425

HOTFOOT LOGISTICS, LLC AND
FREIGHT AMBULANCE, LLC
APPELLANTS

V.

SHIPPING POINT MARKETING, INC.;
DAVID FISHGOLD; AND LOUIS N.
FISHGOLD
APPELLEES

Opinion Delivered February 23, 2012APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. 60CV-10-1466]HONORABLE TIMOTHY DAVID
FOX, JUDGEDISMISSED WITHOUT PREJUDICE.**COURTNEY HUDSON GOODSON, Associate Justice**

Appellants Hotfoot Logistics, LLC (Hotfoot) and Freight Ambulance, LLC (Freight) appeal from an order of the Pulaski County Circuit Court granting a motion to dismiss based on lack of personal jurisdiction filed by appellees, Shipping Point Marketing (SPM), David Fishgold (David), and Louis Fishgold (Louis). On appeal, appellants argue that the circuit court erred in granting appellees' motion to dismiss and challenge the circuit court's decision to award attorney's fees. We accepted certification of this case from the court of appeals pursuant to Arkansas Supreme Court Rule 1-2(b)(1), (4), and (5), as this case presents an issue of first impression, an issue of significant public interest, and an issue needing clarification. We dismiss the appeal without prejudice for lack of a final, appealable order.

SPM, an independent shipper located in Phoenix, Arizona, and three other shippers engaged Western Brokerage, Inc. (Western) to arrange for the transportation of produce from

Yuma, Arizona, to Scranton, Pennsylvania, and Albany, New York. On November 23, 2008, Western posted a notice of available cargo and a request for carriers on Internet Truck Stop, a nationwide internet board used in the trucking industry. Hotfoot, a transportation broker in Little Rock, responded to Western's post and agreed to transport produce through Freight, its carrier. Freight delivered the produce on November 29 and 30, 2008, but Hotfoot allegedly was not paid for the freight charges.

On April 14, 2010, appellants filed suit against SPM, the other independent shippers, and Western for breach of contract. Appellants also sued the Fishgolds for fraud. In the complaint, appellants named the following defendants: (1) SPM; (2) Western; (3) Bonipak Produce, Inc.; (4) Salyer American Fresh Foods, Inc.; (5) Taylor Farms California, Inc.; (6) David; and (7) Louis. Western and the other independent shippers were dismissed on various grounds. SPM and the Fishgolds separately moved to dismiss on the basis that the circuit court lacked personal jurisdiction. The circuit court agreed and dismissed the complaint. SPM and the Fishgolds moved for attorney's fees, and the circuit court granted the motion. Appellants now bring their appeal.

Before reaching the merits of the arguments on appeal, we must consider whether a final, appealable order exists in this case. The question of whether an order is final and subject to appeal is a jurisdictional question that this court will raise *sua sponte*. *Jones v. Huckabee*, 363 Ark. 239, 213 S.W.3d 11 (2005). 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. Rule 54(b) of the Arkansas Rules of Civil Procedure deals with

the finality of orders in connection with judgments upon multiple claims or involving multiple parties and 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.

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(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.

Thus, our court has held that under Rule 54(b), an order is not final that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties. *See S. Farm Bureau Cas. Ins. Co. v. Easter*, 369 Ark. 101, 251 S.W.3d 251 (2007). Specifically, this 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).

In the present case, the circuit court dismissed the named defendants as follows: (1) SPM dismissed by an order, dated December 9, 2010; (2) Western dismissed by an order, dated November 24, 2010, for failure to serve Western; (3) Bonipak Produce, Inc. dismissed by an order, dated November 23, 2010, on the court's initiative for failure to serve Bonipak; (4) Taylor Farms California, Inc. dismissed by an order, dated August 12, 2010, because the

parties settled; (5) David dismissed by order, dated December 9, 2010; and (6) Louis dismissed by order, dated December 9, 2010. However, the record does not reflect that the named defendant, Salyer American Fresh Foods, has ever been dismissed from the case. Here, appellants appeal from the circuit court's December 9, 2010 order, which states, "There being no other matters pending in this case, it is hereby directed that the Circuit Clerk close this matter." Although the circuit court may direct entry of a final judgment as to fewer than all of the parties by executing a Rule 54(b) certificate, the circuit court did not attach a Rule 54(b) certificate to its order. Therefore, we hold that the order is not final and appealable, and this court lacks jurisdiction to consider the appeal. Accordingly, we dismiss without prejudice so that the circuit court may enter an appropriate order. *Crafton, Tull, Sparks & Assocs. v. Ruskin Heights*, 2012 Ark. 56.

We further note that effective January 1, 2009, this court amended Arkansas Rule of Civil Procedure 54(b) to state that any claim against a named but unserved defendant is dismissed by the circuit court's final judgment or decree. Ark. R. Civ. P. 54(b)(5) (2011). However, this rule does not resolve the issue in the present case because the record fails to demonstrate whether Salyer was served.

Dismissed without prejudice.