

SUPREME COURT OF ARKANSAS

No. 12-504

PATRICK VEVERKA and KIM
VEVERKA

APPELLANTS

V.

JIM ED GIBSON, POPE COUNTY
JUDGE

APPELLEE

Opinion Delivered February 14, 2013APPEAL FROM THE POPE COUNTY
CIRCUIT COURT
[NO. CV-12-58]HONORABLE DENNIS CHARLES
SUTTERFIELD, JUDGEAFFIRMED.**JOSEPHINE LINKER HART, Associate Justice**

Patrick and Kim Veverka (the Veverkas) appeal from the Pope County Circuit Court's dismissal of their petition for a writ of mandamus. They had sought the writ to compel the Pope County Judge, Jim Ed Gibson, to rule on the Veverkas' November 15, 2011 petition to modify a judgment entered on July 26, 2011 (the July order) that established a private road. On appeal, the Veverkas argue that the circuit court erred by dismissing their petition because (1) the July order did not comply with Arkansas Code Annotated section 27-66-403(a)(3)(B)(ii)(c) (Repl. 2010), and therefore the order entered was not a final order; (2) the county court still had jurisdiction to enter a final order although more than 90 days had elapsed since the entry of the July order; (3) the county court was "duty-bound" to enter a compliant order; and (4) the county court was bound to give effect to all the language in a statute. We affirm.

In the July order, Judge Gibson granted Kathleen B. Baudean and Sharon Butler a

private road across property owned by the Veverkas. The order, however, omitted the mandatory language required by Arkansas Code Annotated section 27-66-403(a)(3)(B)(ii)(c).

On November 15, 2011, the Veverkas petitioned (the November petition) the county court to modify the July order. They alleged that the failure to include the mandatory provisions from section 27-66-403 precluded it from being a final order from which an appeal could be taken. The county judge refused to act on the Veverkas' November petition, believing it was an untimely posttrial motion. The Veverkas were notified of this decision by letter dated January 31, 2012, from Judge Gibson.

On February 8, 2012, the Veverkas filed a petition in circuit court seeking a writ of mandamus to compel Judge Gibson to rule on the November petition to modify the July order. Judge Gibson answered and moved to dismiss, asserting that the petition to modify was filed more than 90 days after the entry of the July order, so under Rule 60 of the Arkansas Rules of Civil Procedure, the county court no longer had jurisdiction. On April 16, 2012, the Pope County Circuit Court dismissed the Veverkas' mandamus petition. The Veverkas timely filed a notice of appeal from the circuit court order.

Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(a)(3) (2012). When we review a circuit court's decision granting a motion to dismiss a petition or complaint, we treat the facts alleged in the complaint as true and view them in the light most favorable to the party who filed the complaint. *McNeil v. Weiss*, 2011 Ark. 46, 378 S.W.3d 133. All reasonable inferences are resolved in favor of the complaint, which we will liberally construe. *Id.* The purpose of a writ of mandamus is to enforce an established right or to

enforce the performance of a duty by a public official. *Arkansas Democrat-Gazette v. Zimmerman*, 341 Ark. 771, 20 S.W.3d 301 (2000). When seeking a writ of mandamus, a petitioner must show a clear and certain right to the relief sought and the absence of any other adequate remedy. *Id.*

The Veverkas list four points on appeal, but because the first two points are inextricably intertwined and resolution of these two issues decides this appeal, we will consider them together. They argue that the county court had not entered a compliant order and therefore the order entered was not final. They contend that the failure to include the mandatory language from section 27-66-403 failed to conclude their “rights” in the subject matter in controversy or resolve all of the legal issues between the parties. Reasoning that the order was not final, the county court still had jurisdiction to enter a final order. We find this argument unpersuasive.

In *Blackman v. Glidewell*, 2011 Ark. 23, we discussed what is meant by a final order under Arkansas law. To be a final order, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Id.* We further noted that if an order contemplates further action by a party or the court, it is not a final order. *Id.* We also stated that the purpose of requiring a final order is to avoid piecemeal litigation. *Id.*

When the county court entered its July order, there was nothing left to be litigated. While it is true that the county court’s order did not contain all the language required by section 27-66-403, this defect did not preclude an appeal to circuit court. *Armstrong v. Cook*,

243 Ark. 230, 419 S.W.2d 308 (1967). In circuit court, the case would be tried de novo, and the omissions in the county court's orders could be rectified in the circuit court's order. The availability of direct appeal provides the Veverkas an adequate remedy at law and forecloses their right to obtain an extraordinary writ. *Manila Sch. Dist. No. 15 v. Wagner*, 357 Ark. 20, 26, 159 S.W.3d 285, 290 (2004).

Regarding the Veverkas' remaining points, we hold that they likewise could be adequately addressed by appeal to circuit court. Accordingly, the circuit court did not err in refusing to issue a writ of mandamus.

Affirmed.

Jon R. Sanford, P.A., by: *Jon R. Sanford*, for appellants.

The Coutts Law Firm, P.A., by: *James V. Coutts*, for appellee.