

SUPREME COURT OF ARKANSAS

No. 12-646

CRAFTON, TULL, SPARKS &
ASSOCIATES

APPELLANT

VS.

RUSKIN HEIGHTS, LLC;
METROPOLITAN NATIONAL BANK;
WILLIAM B. BENTON, JR.; J. KEVIN
ADAMS; EDWARD A. LABRY, III;
JOHN G. BRITTINGHAM; CARLEN G.
HOOKER; EDWARD F. DAVIS; DIRK
W. VAN VEEN; AND DAVID RUFF, IN
HIS CAPACITY AS TAX COLLECTOR
FOR WASHINGTON COUNTY,
ARKANSAS

APPELLEES

Opinion Delivered February 28, 2013

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT,
[NO. CIV2009-2582-4]HON. GEORGE CHADDWICK
MASON, JUDGEDISMISSED WITHOUT PREJUDICE.**KAREN R. BAKER, Associate Justice**

Appellant Crafton, Tull, Sparks & Associates (CTSA) appeals from a November 29, 2010, order of the Washington County Circuit Court finding that CTSA's lien was second in priority to Appellee Metropolitan National Bank's lien on certain property. We dismiss the appeal for lack of a final order.

The facts underlying the case were previously set out in *Crafton, Tull, Sparks & Associates v. Ruskin Heights, LLC*, 2012 Ark. 56. In that case, we dismissed CTSA's appeal for lack of a final order because we identified several outstanding issues. First, Nabholz Construction Company's complaint in intervention and any relevant pleadings were not

included in the record. Second, the record contained no final disposition as to Metropolitan's claims against Carlen G. Hooker and David Ruff. Finally, the status of CTSA's breach-of-contract claims against the individual defendants and its monetary-judgment claim against Ruskin Heights was unclear.

In dismissing the case without prejudice, we explained that because of the outstanding issues, the order was not final under Rule 54(b) of the Arkansas Rules of Civil Procedure. After the previous case was dismissed, CTSA requested a Rule 54(b) certificate from the circuit court in order to cure the deficiency. The circuit court filed an order titled "Final Judgment and Rule 54(b) certificate." The order stated that the following parties and actions remain unresolved: David Ruff, Washington County Tax Collector's cause of action for tax debt owed on the subject property and Nabholz's breach of contract claims against William B. Benton, Jr., J. Kevin Adams, Edward A. Labry, III, John G. Brittingham, Edward F. Davis, and Kirk. W. Van Veen. CTSA then brought this appeal.

Although neither party raises the issue, the question of whether an order is final and subject to appeal is a jurisdictional question, which the court will raise sua sponte. *Moses v. Hanna's Candle Co.*, 353 Ark. 101, 103, 110 S.W.3d 725, 726 (2003). 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. *Searcy Cnty. Counsel for Ethical Gov't v. Hinchey*, 2011 Ark. 533. Under Arkansas Rule of Civil Procedure 54(b), an order that fails to adjudicate all of the claims as to all of the parties, whether presented as claims, counterclaims, cross-claims, or third-party claims, is not final for purposes of appeal. *Dodge*

v. Lee, 350 Ark. 480, 88 S.W.3d 843 (2002). An appeal from such an order, however, is permissible under Arkansas Rule of Civil Procedure 54(b) when the trial court directs the entry of a final judgment as to one or more of the claims or parties and makes express findings that there is no just reason to delay the appeal. *Davis v. Wausau Ins. Cos.*, 315 Ark. 330, 867 S.W.2d 444 (1993). The trial court must make specific findings of fact to support the determination that there is no just reason to delay the appeal. Ark. R. Civ. P. 54(b).

In this case, the Rule 54(b) certificate contains only a lengthy procedural history, a finding that there are certain unresolved claims, and a conclusion that there is no just reason for delay. In sum, there are no express factual findings underpinning the conclusion that there is no just reason to delay the appeal.

Further, in addition to the unresolved issues laid out in the “Final Order and Rule 54(b) Certification, the record still does not contain Nabholz’s complaint in intervention, any relevant pleadings to that complaint, or a final disposition as to Metropolitan’s claims against David Ruff. Without a final order or a sufficient Rule 54(b) certificate, we do not have jurisdiction to hear this case and must dismiss this appeal without prejudice.

We encourage counsel to review our rules and the record to ensure that no additional deficiencies are present.

Dismissed without prejudice.

Matthews, Campbell, Rhoads, McClure & Thompson, P.A., by: *Sarah L. Waddoups*, for appellant.

McMullan Law Firm, by: *Marian Major McMullan*, for appellees.