

SUPREME COURT OF ARKANSAS

No. 12-744

KYLIE B. CHITWOOD

APPELLANT

V.

GORDON G. CHITWOOD

APPELLEE

Opinion Delivered May 9, 2013APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. DR-11-1164-5]HONORABLE XOLLIE DUNCAN,
JUDGEAPPEAL DISMISSED.**COURTNEY HUDSON GOODSON, Associate Justice**

Appellant Kylie B. Chitwood (Kylie) appeals the order of the Benton County Circuit Court granting summary judgment on her complaint for unpaid child support in favor of her father, appellee Gordon G. Chitwood (Gordon). For reversal, Kylie contends that the circuit court erred in ruling that no arrearage existed because her mother was deemed to be estopped from collecting the arrearage in a previous lawsuit. She also argues that the court erred in finding that Gordon does not owe support because her needs were being met during the period that he did not pay support. We dismiss the appeal for the lack of a final order.

The record reflects that Kylie was born on October 1, 1990, during the marriage of Gordon and Jane Chitwood. Gordon and Jane divorced in October 1993, and Gordon was ordered to pay child support. On July 26, 2011, Kylie, then age twenty, filed a complaint against Gordon to collect an alleged arrearage in child support that accrued from February 19, 1999, to May 31, 2004.

On August 30, 2011, Gordon filed a third-party complaint against Jane seeking indemnification from her should he be required to pay back child support. Jane filed a motion to dismiss the third-party complaint. However, the circuit court denied the motion to dismiss by an order dated November 3, 2011. Gordon subsequently filed a motion for summary judgment for the dismissal of Kylie's complaint. Primarily, Gordon asserted that Kylie's complaint was barred under the law-of-the-case doctrine, based on previous litigation wherein he had prevailed against Jane on her claim for unpaid child support.¹ After a hearing, the circuit court entered an order granting Gordon's motion for summary judgment on May 24, 2012. Kylie filed a timely notice of appeal from the summary-judgment order.

As a threshold issue, we must determine whether the order being appealed is a final, appealable order pursuant to Rule 54(b) of the Arkansas Rules of Civil Procedure. *Carr v. Nance*, 2010 Ark. 25. It is well settled that the failure to obtain a final order as to all the parties and all the claims, as required by Rule 54(b), renders the matter not final for purposes of appeal. *Ramsey v. Beverly Enters., Inc.*, 375 Ark. 424, 291 S.W.3d 185 (2009); *Nat'l Home Ctrs., Inc. v. Coleman*, 370 Ark. 119, 257 S.W.3d 862 (2007). While neither party has raised this issue, the question of whether an order is final and subject to appeal is a jurisdictional question that this court will raise sua sponte. *Searcy Cnty. Counsel for Ethical Gov't v. Hinchey*, 2011 Ark. 533.

The circuit court in this case granted Gordon's motion for summary judgment as to

¹ In that case, the court of appeals affirmed the circuit court's decision that Jane was estopped from collecting unpaid support. See *Chitwood v. Chitwood*, 92 Ark. App. 129, 211 S.W.3d 547 (2005).

Kylie's complaint. The order did not address the third-party complaint Gordon filed against Jane; and thus, it remains outstanding. Without a Rule 54(b) certificate from the circuit court directing that the order or decree is final, an order that fails to adjudicate all the claims as to all the parties, whether presented as claims, counterclaims, cross-claims, or third-party claims, is not final for purposes of appeal. *Dorsett v. Buffington*, 2013 Ark. 17; *Harrill & Sutter, PLLC v. Farrar*, 2011 Ark. 181. Because the order of summary judgment does not dispose of the third-party complaint, there is no final order, and we must dismiss the appeal without prejudice. See *Ford Motor Co. v. Washington*, 2012 Ark. 325.

Appeal dismissed.

Hogue Law Firm, PLLC, by: *Brian C. Hogue*, for appellant.

Matthews, Campbell, Rhoads, McClure & Thompson, P.A., by: *David R. Matthews* and *Sarah L. Waddoups*, for appellee Gordon Glen Chitwood.