

**SUPREME COURT OF ARKANSAS**

No. 12-760

THE PYRAMID LIFE INSURANCE  
COMPANY

APPELLANT

V.

WILLIAM PARSONS AND HOLLINE  
PARSONS

APPELLEES

**Opinion Delivered** March 28, 2013APPEAL FROM THE CRAWFORD  
COUNTY CIRCUIT COURT  
[NO. 17CIV 2010-73]HONORABLE MICHAEL MEDLOCK,  
JUDGEDISMISSED WITHOUT PREJUDICE.**DONALD L. CORBIN, Associate Justice**

This is an appeal from an order granting, in part, summary judgment in favor of Appellees Holline and William Parsons and denying a cross-motion for summary judgment filed by Appellant The Pyramid Life Insurance Company. Appellees have raised the issue that the circuit court erred in certifying this appeal pursuant to Ark. R. Civ. P. 54(b) (2012) and assert that the circuit court did not rule on each issue presented in the instant appeal.<sup>1</sup> We agree that the Rule 54(b) certificate is insufficient and therefore dismiss the instant appeal without prejudice.

The pertinent facts are these. The Parsonses each completed applications and were subsequently enrolled in Today's Option, a Medicare Advantage Plan sponsored by Pyramid. After the Parsonses were each disenrolled from their respective plans, they brought suit against Pyramid asserting numerous state-law claims, including (1) breach of contract, (2) statutory

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<sup>1</sup>This appeal was originally filed in the court of appeals. At the time the Parsonses filed their brief, they also filed a motion to dismiss, alleging that the Rule 54(b) certification was improper. The court of appeals denied the motion to dismiss.

penalties against an insurer pursuant to Ark. Code Ann. § 23-79-208, (3) breach of Pyramid's fiduciary duty as an insurer, (4) violation of the Arkansas Deceptive Trade Practices Act, (5) unjust enrichment and promissory estoppel, and (6) claims for punitive damages. In its answer, Pyramid denied liability but also pleaded the affirmative defense of federal preemption "because the Medicare Act expressly preempts state substantive law and provides the exclusive remedy for the claims asserted by Plaintiffs."

Thereafter, the Parsons filed a "Motion for Partial Summary Judgment," requesting that the circuit court enter an order "declaring that the Medicare Act does not provide the exclusive remedy for the Plaintiffs' claims in this case and that it does not preempt the Plaintiffs' claims in this case."

Pyramid filed a "Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment and Defendant's Cross Motion for Summary Judgment." Therein, Pyramid, in its cross-motion for summary judgment, requested that the circuit court enter an order dismissing without prejudice the Plaintiffs' state-law claims

because these claims "arise under" the Medicare Act, and the Plaintiffs failed to properly exhaust their claims through the Medicare Act's administrative remedial scheme. Alternatively, to the extent the Court finds that any of the Plaintiffs' state law claims do not 'arise under' the Medicare Act, Pyramid Life requests that the Court enter an Order dismissing those claims because they are expressly preempted by the Medicare Act.

A hearing was held on the cross-motions for summary judgment. The circuit court subsequently entered an order finding as follows:

1. Plaintiffs' Motion for Summary Judgment is granted in part, in that the Court finds that the Medicare Act is not the exclusive remedy between claimants and Medicare Supplement Insurers.

2. Defendant's Cross-Motion or Counter-Motion for Summary Judgment is denied.

Pyramid then moved for Rule 54(b) certification and a stay pending appeal. In its motion, it requested permission to file an interlocutory appeal on the issues of whether the Parsons'es state-law claims arise under the Medicare Act, thereby requiring them to exhaust their administrative remedies under the Act, and whether their claims, to the extent they do not arise under the Act, are expressly preempted by the Act.

A hearing on the certification motion was held, at which the Parsons'es objected to such certification on the basis that it might result in duplicative appeals. At the conclusion of the hearing, the circuit court ruled from the bench as follows:

I'm not sure where it's going if it's appealed, but I am going to grant your motion and allow you to certify it and see what happens I guess.

I don't share either of your optimism about this process being something that takes care of something one way or the other, but I do share this question, or at least some question about the procedure that [the] [Parsons'es] have chosen here and whether or not it fits or it's preempted or whatever and it seems to me like that probably may be an issue that needs to be resolved, and if it's resolved one way or the other then we'll know how to proceed.

An amended order was entered that contained a Rule 54(b) certificate. In that certificate, the circuit court found that

[t]he issues regarding (1) whether Plaintiffs' claims "arise under" the Medicare Act, thereby requiring Plaintiffs to exhaust their administrative remedies under the Medicare Act, and (2) whether Plaintiffs' claims are preempted by the Medicare Act, are matters of the utmost importance to this litigation. As such, the Court finds that an immediate, interlocutory appeal on the issues ruled upon in the Court's order is necessary in order to avoid hardship and injustice that will result if an appeal is not allowed.

The question of whether an order is final and subject to appeal is a jurisdictional question that this court will raise sua sponte. *Robinson v. Villines*, 2012 Ark. 211. Although the purpose of requiring a final order is to avoid piecemeal litigation, a circuit court may certify an otherwise nonfinal order for an immediate appeal by executing a certificate pursuant to Rule 54(b) of the Arkansas Rules of Civil Procedure. *Id.* Rule 54(b) provides in part that, when multiple parties or multiple claims are involved in a case, the trial court may direct the entry of final judgment “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.” *Id.* at 4.

Upon review, it is clear that the finding supporting the Rule 54(b) certification was in error. Specifically, the Rule 54(b) certification is premised on the finding that the circuit court ruled on both the issue of exclusive remedy and the issue of preemption, but the circuit court’s order focused solely on the issue of exclusive remedy. In its order, the circuit court granted the Parsons’ motion for summary judgment “in part” and then specifically ruled that the Medicare Act was not the exclusive remedy in this case. The court did not grant relief on the basis that the Medicare Act did not preempt the Parsons’ state-law claims. Granted, the circuit court denied Pyramid’s motion for summary judgment, which had raised both the issue of exclusive remedy and the issue of preemption. But, if we read that order as a denial of both claims, the result would be the same as the circuit court granting the Parsons’ motion for summary judgment on both exclusive remedy and preemption. This conflicts with the circuit court’s specific grant of summary judgment in part only on the issue of exclusive remedy. That

being the case, if we allow the appeal to proceed, we will be able to address only the first issue on appeal, exclusive remedy, because the issue of preemption is not properly before us. To do so would conflict with the stated purpose of Rule 54(b)—to avoid piecemeal appeals.

Accordingly, because we lack a final order and because we are presented with an erroneous Rule 54(b) finding, we must dismiss the instant appeal without prejudice.

DANIELSON, J., not participating.

*Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.*, by: *Marshall S. Ney* and *Jenny T. Garrett*, for appellant.

*Ledbetter, Cogbill, Arnold & Harrison, L.L.P.*, by: *Victor L. Crowell*, for appellees.