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SUPREME COURT OF ARKANSAS

No. 12-910

FORD MOTOR COMPANY APPELLANT V. PAULETTE R. WASHINGTON APPELLEE	**Opinion Delivered February 28, 2013** APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. CV-2003-627-1] HONORABLE BERLIN C. JONES, JUDGE APPEAL DISMISSED WITHOUT PREJUDICE.

CLIFF HOOFMAN, Associate Justice

Appellant Ford Motor Company ("Ford") appeals from a judgment reflecting the jury's award of compensatory and punitive damages in favor of Appellee Paulette R. Washington, individually and as administratrix of the Estate of Johnny Ray Washington, and as parent and legal guardian of Terian Washington, a minor (hereinafter referred to as "Washington"). On appeal, Ford asserts that the circuit court abused its discretion in refusing to admit evidence of seatbelt noncompliance pursuant to Arkansas Code Annotated section 27-37-703 (Repl. 2008); that the circuit court erred as a matter of law in determining that the defective-glass claim was not preempted by Federal Motor Vehicle Safety Standard 205, 49 C.F.R. § 571.205 (2001); that the circuit court erred in denying Ford's motion for judgment notwithstanding the verdict where the evidence did not support the jury's award of punitive damages; and that the circuit court erred in failing to reduce the jury's compensatory-damages award by fifty

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percent before entering judgment on Washington's behalf. We dismiss the appeal because we lack jurisdiction.

On August 23, 2000, Johnny Ray Washington and his son Terian were traveling in their 1994 Ford Explorer when the vehicle was struck on the driver's side by Karah Allen Williams, who had run a stop sign. The Explorer rolled over twice and landed right-side up. Terian walked away from the accident, but Johnny suffered a fatal head injury.

On August 14, 2003, Washington filed a complaint in Jefferson County Circuit Court against Ford; Freeway Ford Lincoln Mercury Inc., the dealer who sold the Explorer; and Williams. Washington sought compensatory and punitive damages. Washington and Williams settled, and the circuit court entered an order dismissing all claims against her with prejudice. Thereafter, Washington moved to nonsuit her claims against Freeway Ford, and the circuit court orally granted the motion.

The case proceeded to trial on August 16, 2010, solely against Ford on claims for negligence, strict liability, failure to warn, and breach of warranties. Washington alleged that the Explorer had two defects: (1) the propensity to roll over; and (2) the use of tempered, rather than laminated glass, in the side windows that made ejection or partial ejection in a rollover more likely. Although Williams had been previously dismissed, the circuit court allowed her to be placed on the verdict form for apportionment purposes. The jury returned a verdict finding that both Ford and Williams, in equal measure, had been the proximate cause of Johnny's death. The jury awarded $4,652,125 in compensatory damages and $2.5 million in punitive damages.

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Both Washington and Ford filed motions for entry of judgment following the jury's verdict, disagreeing about the exact amount of damages Ford owed. On October 6, 2010, the circuit court entered the following judgment:

> On August 16, 2010 the above entitled cause came on for trial. The plaintiffs, Paulette R. Washington, appeared in person and by her attorneys, Richard Denney, Lydia Barrett, Phillip Duncan and Gene McKissic. The defendant, Ford Motor Company, appeared through its attorneys, Alan Thomas, Edwin L. Lowther, Jr. and Jesse Kearney. Twelve persons were duly impaneled as jurors. The case proceeded for trial before said jurors, who were sworn according to law to try the issues joined between the parties. On August 27, 2010, after hearing the testimony and the evidence introduced at trial, the arguments of counsel and the instructions of the Court, the jury returned the following verdicts upon special interrogatories:
>
> > Interrogatory No. 1: Do you find by a preponderance of the evidence that there was fault on the part of Ford Motor Company which was a proximate cause of the death of Johnny Washington?
> >
> > A. Yes. [Juror names omitted.]
> >
> > Interrogatory No. 2: Do you find by a preponderance of the evidence that there was fault on the part of Karah J. Allen Williams which was a proximate cause of the death of Johnny Washington?
> >
> > A. Yes. [Jury foreperson's name omitted.]
> >
> > Interrogatory No. 3: Using 100% as representing the entire responsibility for this accident or the extent of the plaintiff's decedent's injuries, apportion the percentage of fault to each person or corporation that you have found to be at fault:
> >
> > Ford Motor Company – 50%
> > Karah J. Allen Williams – 50%
> >
> > Total 100% [Jury foreperson's name omitted.]
> >
> > Interrogatory No. 4: State the amount of damages which you find from a preponderance of the evidence were sustained by Plaintiff Paulette R. Washington, Administratrix of the Estate of Johnny Ray Washington:

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A.		
	Estate of Johnny R. Washington	$383,333.33
	Paulette R. Washington, Individually	$3,918,791.67
	Terian Washington	$100,000.00
	Quintin Swygart	$100,000.00
	Alisha Sweet	$100,000.00
	Rosie Washington	$50,000.00
	Sandra Washington	$0.00
	Melvie Washington	$0.00
	Cathy Frazier	$0.00
	Terry Washington	$0.00
	Dorothy Washington-Campbell	$0.00
	Yvonne Washington-McDonald	$0.00
	Patty Washington-Dyer	$0.00
	Yvette Washington-Holly	$0.00
	Lorice Washington	$0.00
	Irma Cheryl Washington	$0.00
	Monique Washington-Martin	$0.00
	Myrtle Washington	$0.00
	Jean Boston	$0.00

[Jury foreperson's name omitted.]

Interrogatory No. 5: Do you find by a preponderance of the evidence that Plaintiff Paulette R. Washington is entitled to punitive damages[?]

A. Yes. [Juror names omitted.]

Interrogatory No. 6: State the amount of punitive damages to which you find Plaintiff Paulette R. Washington, Administratrix of the Estate of Johnny Ray Washington is entitled to by a preponderance of the evidence.

A. $2,500,000.00 [Juror names omitted.]

Therefore, judgment is awarded to the respective plaintiffs as set out above.

Ford appealed, and this court dismissed the appeal without prejudice for lack of a final order because no written order dismissing Freeway Ford had been entered. *See Ford Motor Co. v. Washington*, 2012 Ark. 325. The circuit court then entered an order dismissing Freeway Ford

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with prejudice, and this appeal followed.

Even if neither party raises the issue of jurisdiction on appeal, the appellate court is obligated to raise the issue sua sponte. *Elis v. Ark. State Highway Comm'n*, 2010 Ark. 196, 363 S.W.3d 321. With exceptions not applicable here, an appeal may be taken only from a final judgment or decree entered by the trial court. Ark. R. App. P.–Civ. 2(a)(1) (2012). For a judgment to be final and appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Kelly v. Kelly*, 310 Ark. 244, 835 S.W.2d 869 (1992); *Jackson v. Yowell*, 307 Ark. 222, 818 S.W.2d 950 (1991). To be final, an order must not only decide the rights of the parties, but also put the court's directive into execution, ending the litigation or a separable part of it. *Kilgore v. Viner*, 293 Ark. 187, 736 S.W.2d 1 (1987).

In *Thomas v. McElroy*, 243 Ark. 465, 420 S.W.2d 530 (1967), we explained the formal requirements of what constitutes a final judgment. To be final, a judgment for money must state the amount that the defendant is required to pay. *Id*. In citing Arkansas statutory law, we said that the amount of the judgment must be computed, as near as may be, in dollars and cents and that the judgment must specify clearly the relief granted or other determination of the action. *Id*.; *see also* Ark. Code Ann. § 16-65-103 (Repl. 2005) (declaring that all judgments or decrees shall be computed, as near as may be, in dollars and cents). In *Thomas*, we noted that a final judgment or decision is one that finally adjudicates the rights of the parties, and it must be such a final determination as may be enforced by execution or in some other appropriate manner. *See also Villines v. Harris*, 362 Ark. 393, 208 S.W.3d 763 (2005)

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(holding that, although a previous order set out a formula for calculating damages, the order was not final because it did not establish the amount of damages); *Office of Child Support Enforcement v. Oliver*, 324 Ark. 447, 921 S.W.2d 602 (1996) (holding that an order was not final where an arrearage in child support was found but the amount of the arrearage was not determined); *Hastings v. Planters & Stockmen Bank*, 296 Ark. 409, 757 S.W.2d 546 (1989) (holding that an order of summary judgment was not final where the amount owed was not specified in dollars and cents, there were issues that appeared to be outstanding, and the judgment did not dismiss or discharge the appellant).

Here, the judgment is not final because it does not set forth a specific dollar amount owed by Ford. Instead, the circuit court merely reproduced the jury's answers to the interrogatories and gave no further guidance. Despite the dissent's assertions to the contrary, it is not the form of the circuit court's judgment that concerns this court. Rather, it is the fact that the circuit court has neglected to enter a final judgment amount that is computed, as near as may be, in dollars and cents. It is unclear whether Ford is responsible for half of the compensatory damages listed, half of the punitive damages listed, all of both, or some combination thereof. This problem is further demonstrated by the fact that Ford asks this court on appeal to clarify the judgment so as to ascertain the exact dollar amount owed by Ford. Consequently, without a specific amount, computed as near as may be in dollars and cents, that Ford is ordered to pay, this judgment is not final.

Because we lack a final order, this court has no jurisdiction to hear the appeal. Accordingly, we dismiss without prejudice.

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Appeal dismissed without prejudice.

HART, J., dissents.

I am aware that the record in this case is huge. The abstract is 2208 pages, and the addendum, even with the missing items is 1201 pages. Even so, this court has previously dismissed this appeal because it found that there was a lack of a final order, *Ford Motor Co. v. Washington*, 2012 Ark. 325, but did not address what they now perceive as an additional problem with the trial court's order. Under this court's rules, the first dismissal was justified, because the final order failed to resolve an outstanding claim against a named party. I cannot likewise approve of today's dismissal.

This case was resolved by a jury verdict. The majority notes that the jury awarded $4,652,125 in compensatory damages and $2,500,000 in punitive damages. The damages were awarded in special interrogatories, which the majority has reproduced in its opinion. In those interrogatories, the jury apportioned the responsibility for the accident at fifty percent to the driver, Karah J. Allen Williams, and fifty percent to Ford Motor Company. Yet, despite the specificity of the award, the majority declares that the judgment is not final because it does not set forth the "specific dollar amount owed by Ford." It is simply not defensible to assert that this judgment is not final because this court does not deign to perform a simple arithmetical operation that is routinely taught in the second grade—division by two.

I am likewise troubled that the majority would fault the trial court because it "merely reproduced the jury's answers to the interrogatories." Arkansas Rule of Civil Procedure 58 (2012) specifically authorizes a trial court to "enter its own form of judgment or decree." In

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this case, the jury was the finder of fact, *not* the trial judge. Except for granting a remittitur or an additur, the trial judge was obligated to accept the jury's verdict.

The majority's decision is not supported by our case law. The cases cited by the majority do not involve jury verdicts. *Thomas v. McElroy*, 243 Ark. 465, 420 S.W.2d 530 (1967) is a chancery case; *Villines v. Harris*, 362 Ark. 393, 208 S.W.3d 763 (2005), is an appeal from county court to circuit court that was dismissed because the county court did not have subject-matter jurisdiction; *Office of Child Support Enforcement v. Oliver*, 324 Ark. 447, 921 S.W.2d 602 (1996) is a chancery case; and *Hastings v. Planters & Stockmen Bank*, 296 Ark. 409, 757 S.W.2d 546 (1989) is a summary judgment. Moreover, in *Thomas*, *Harris*, and *Oliver*, it was apparent from the record that the trial court, sitting as the trier of fact, intended to do additional work on the case. Thus, the majority has not cited a single case where this court has dismissed an appeal because a trial judge has failed to put a jury verdict in a kind of format that this court likes better. Indeed, in *Thomas* this court stated that "strict formality of language used to express the adjudication of the court is not necessary. 243 Ark. at 468, 420 S.W.2d at 532.

Finally, if it is "unclear" to the majority whether Ford is responsible for half the damages, it must refer only to the black-letter law regarding the construction of judgments. "As a general rule, judgments are to be construed like other written instruments, and the legal effect of a judgment must be declared in light of the literal meaning of the language used." Am. Jur. 2d *Judgments* § 74 (2006). In my view, the judgment is final.

Wright, Lindsey & Jennings, LLP, by: *Edwin L. Lowther, Jr.*, *Paul D. Morris*, and *Gary D. Marts, Jr.*, for appellant.

The Duncan Firm, by: *Phillip J. Duncan*; *Denney & Barrett, P.C.*, by: *Richard L. Denney* and *Lydia JoAnn Barrett*; and *Brian G. Brooks, Attorney at Law, PLLC*, by: *Brian G. Brooks*, for appellee.