

Cite as 2011 Ark. 23

SUPREME COURT OF ARKANSAS

No. 10-440

KEITH BLACKMAN, DISTRICT JUDGE
OF THE DISTRICT COURT OF
CRAIGHEAD COUNTY, ARKANSAS;
CRAIGHEAD COUNTY, ARKANSAS;
CITY OF BAY, ARKANSAS; CITY OF
BONO, ARKANSAS; CITY OF
BROOKLAND, ARKANSAS; CITY OF
EGYPT, ARKANSAS; AND CITY OF
JONESBORO, ARKANSAS

APPELLANTS

VS.

LETICIA GLIDEWELL, MICHAEL LYNN
JOHNSON, ERIK STENZEL, ENRICO
HINES, AMANDA SWARTZ, WILLIAM
MCMINN, AND STEVEN DUNKERSON

APPELLEES

Opinion Delivered January 27, 2010

APPEAL FROM THE CIRCUIT
COURT OF CRAIGHEAD COUNTY,
NOS. CV-07-2 & CV-07-32,
HON. RANDY PHILHOURS, JUDGE

APPEAL DISMISSED.

COURTNEY HUDSON HENRY, Associate Justice

Appellant Keith Blackman, a district judge in Craighead County, appeals the order of summary judgment entered by the Craighead County Circuit Court ruling that a charge levied by appellant against certain criminal defendants constituted an illegal exaction.¹ For reversal, appellant contends (1) that the circuit court erred in concluding that there were no material issues of fact regarding the fees; (2) that the fees assessed were not in excess of the maximum

¹ The notice of appeal, dated February 5, 2010, lists appellant Blackman as the only appealing party.

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allowable sentence and thus were not illegal; (3) that the circuit court erred in concluding that the fees amounted to an illegal exaction; and (4) that the prerequisites for class certification under Rule 23 of the Arkansas Rules of Civil Procedure were not met. We are precluded from addressing the merits of these arguments because appellant has brought this appeal from an order that is not final. Accordingly, we dismiss the appeal.

On January 12, 2007, appellees Leticia Glidewell, Michael Lynn Johnson, Erik Stenzel, Enrico Hines, Amanda Swartz, William McMinn, and Steven Dunkerson filed suit on behalf of themselves and others similarly situated against appellant, alleging that his practice of assessing a charge of \$35 against defendants who appeared for trial without an attorney and changed their pleas from “not guilty” to “guilty” constituted an illegal exaction under Article 16, section 13 of the Arkansas Constitution. The complaint also named as defendants the various entities that had received the benefit of the charges, which were designated at times as either a witness fee, a contempt fee, or a fine.² Appellees argued that assessing the charge violated Arkansas Code Annotated section 16-10-302 (Repl. 2010), which requires uniformity in all fees and costs; Arkansas Code Annotated section 16-10-305 (Repl. 2010), which sets the amount of court costs; and Arkansas Code Annotated section 16-17-212 (Repl. 2010), which limits fees and costs to those specifically authorized by statute.

Following discovery, appellees moved for summary judgment. After a hearing, the circuit court issued a letter opinion setting forth its decision. Persuaded by *Parker v. Laws*, 249

² Appellees filed suit in both the Western and Eastern Districts of the Craighead County Circuit Court. The cases were consolidated by an order dated July 10, 2009.

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Ark. 632, 460 S.W.2d 337 (1970), the circuit court ruled that appellant's practice of assessing an additional charge for changing a plea was grossly improper and amounted to an illegal exaction. In its order dated January 19, 2010, the court found that appellees and the class they represented were entitled to judgment for the recovery of the sums illegally exacted; ordered appellant to account for the funds collected and to report the names and addresses of the individuals who were assessed the charge; and ordered the entities that received the monies to render an accounting and to place the funds into an account subject to further orders of the court. In addition, the circuit court directed appellees to submit a plan for notifying the members of the class and managing the refunds to be issued. Appellant filed a timely notice of appeal from this order.

We first decide if the appeal is properly before us, as the question of whether an order is final and subject to appeal is a jurisdictional question that the court will raise on its own. *Downum v. Lawrence Hall Nursing Ctr.*, 368 Ark. 51, 243 S.W.3d 263 (2006). 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 a circuit court. An order is final and appealable if it dismisses the parties from the court, discharges them from the action, or concludes their rights to the subject matter in controversy. *Liberty Life Ins. Co. v. McQueen*, 364 Ark. 367, 219 Ark. 172 (2005). By contrast, an order that contemplates further action by a party or the court is not a final, appealable order. *Fisher v. Chavers*, 351 Ark. 318, 92 S.W.3d 30 (2002). Even though the issue decided might be an important one, an appeal will be premature if the decision does

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not, from a practical standpoint, conclude the merits of the case. See *Farrell v. Farrell*, 359 Ark. 1, 193 S.W.3d 734 (2004).

The purpose of requiring a final order is to avoid piecemeal litigation. See *Advanced Env'tl. Recycling Techs., Inc. v. Advanced Control Solutions, Inc.*, 372 Ark. 286, 275 S.W.3d 162 (2008). However, 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. We note that appellant moved for a Rule 54(b) certification, but the circuit court did not act on the motion.

In *Fisher v. Chavers, supra*, the appellant appealed from an order encompassing the circuit court's plan of distribution in an illegal-exaction case. We held that the plan was not a final order because the court contemplated further action and had not discharged the parties from the action. Specifically, the plan itself spoke in terms of the entry of a final order in the future after further computations were made and following the issuance of refund checks to the class members. Also, the plan provided that the parties were not to be discharged until after the disbursement of all funds and following the circuit court's approval of the administrator's final report.

In the case at bar, the circuit court has only determined that appellant's imposition of the charge constitutes an illegal exaction. However, the court is continuing to oversee the process of retaxing the funds that the court has found were illegally obtained. The circuit court has yet to ascertain the amount of the judgment. The members of the class have not been identified,

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and refunds have not been issued. In sum, further action is contemplated before the parties will be discharged from the action. Accordingly, we must dismiss the appeal.

Appeal dismissed.