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SUPREME COURT OF ARKANSAS

No. 11-317

Opinion Delivered December 15, 2011

SEARCY COUNTY COUNSEL FOR ETHICAL GOVERNMENT
APPELLANT

V.

JOHNNY HINCHEY, COUNTY JUDGE
APPELLEE

APPEAL FROM THE SEARCY COUNTY CIRCUIT COURT,
[NO. CV-2008-71]
HON. JOHN B. PLEGGE, JUDGE

DISMISSED WITHOUT PREJUDICE.

JIM GUNTER, Associate Justice

Appellant, a group of taxpayers in Searcy County known as the Searcy County Counsel for Ethical Government, appeals the grant of summary judgment finding that appellee, County Judge Johnny Hinchey, properly followed Ark. Code Ann. § 14-16-106(c) (Supp. 2007) in selling a rock crusher belonging to Searcy County. On appeal, appellant argues that appellee should have instead followed the dictates of Ark. Code Ann. § 14-16-105 (Supp. 2007). We have accepted certification of this case from the court of appeals pursuant to Ark. Sup. Ct. R. 1-2(b)(1), (4), and (6), as this case presents an issue of first impression, an issue of substantial public interest, and an appeal involving the interpretation of an act of the General Assembly. We find that the circuit court's order is not a final, appealable order and therefore dismiss the appeal without prejudice.

In a complaint filed September 15, 2008, appellant alleged that appellee had unlawfully sold equipment belonging to Searcy County to Opal and Clifford Aday. Judge Hinchey and

Opal Aday, as the survivor of Clifford Aday, were both named as defendants to the action. Specifically, the complaint alleged that Judge Hinchey sold Searcy County Asset #00339, a rock crusher valued at $10,000, without following the dictates of Ark. Code Ann. § 14-16-105, which generally governs the sale of county property. Appellant requested a declaratory judgment that the judge had neglected the official duty of his office and that the sale to the Adays was null and void.

Judge Hinchey filed an answer on October 1, 2008, and asserted that the crusher was sold in accordance with Ark. Code Ann. § 14-16-106(c), which states:

> (1) If it is determined by the county judge and the county assessor that any personal property owned by a county is junk, scrap, discarded, or otherwise of no value to the county, then the property may be disposed of in any manner deemed appropriate by the county judge.
> (2) However, the county judge shall report monthly to the quorum court any property that has been disposed of under subdivision (c)(1) of this section.

Judge Hinchey explained that the crusher had not been used in some time, that it had become of no value to the county, and that after discussing the matter with the county assessor a decision was made to sell the crusher for scrap.

On July 13, 2010, Judge Hinchey filed a motion for summary judgment. In the motion, he argued that the specific provision of § 14-16-106(c)(1), not the general provisions of § 14-16-105, governed this case and that he was entitled to judgment as a matter of law. In response, appellant argued that the appraisal of the crusher failed to identify it as salvage, that no order had ever been entered identifying the crusher as "junk, scrap, discarded, or otherwise property of no value," and that, therefore, § 14-16-106(c)(1) could not apply.

On January 10, 2011, the court entered an order granting Judge Hinchey's motion for

summary judgment. The order stated:

> At issue is a piece of equipment that was abandoned and no longer used by the County after the quarry [c]losed in 2005. There is ample evidence in the record that the crusher was in poor condition, occupying space and was junk. Both the County Judge and the Assessor made this determination. Plaintiffs have put forth no evidence to refute this. Because the crusher is junk, it is subject to sale under A.C.A. § 14-16-106(c). It appears from the record that the Defendant, Hinchey, complied with the section of the sale of the crusher. Summary Judgment is therefore appropriate and Plaintiffs' Complaint is hereby and herewith Dismissed with Prejudice.

Appellant filed a notice of appeal from this order on January 11, 2011.

Before reaching the merits of appellant's argument on appeal, this court must consider whether we have a final, appealable order. While neither of the parties 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. *Jones v. Huckabee*, 353 Ark. 239, 213 S.W.3d 11 (2005). 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. Rule 54(b) of the Arkansas Rules of Civil Procedure deals with the finality of orders in connection with judgments upon multiple claims or involving multiple parties and states in relevant part:

> (1) *Certification of Final Judgment*. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties 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.
> . . . .
> (2) *Lack of Certification*. Absent the executed certificate required by paragraph (1) of this subdivision, any judgment, order, or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the judgment, order, or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all of the

parties.

Thus, our court has held that under Rule 54(b), an order is not final that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties. *See S. Farm Bureau Cas. Ins. Co. v. Easter*, 369 Ark. 101, 251 S.W.3d 251 (2007). Specifically, this court has held that a summary-judgment order is not a final, appealable order where the order does not dispose of the complaints against all of the defendants. *Vimy Ridge Mun. Water Improvement Dist. No. 139 v. Ryles*, 369 Ark. 217, 253 S.W.3d 436 (2007).

In *Vimy Ridge*, the improvement district filed a complaint of foreclosure against a number of defendants, including several that were collectively referred to as the "Ryles appellees." Cross-motions for summary judgment were filed, and the court granted the Ryles appellees' motion for summary judgment and dismissed with prejudice "any and all other claims, cross-claims, or counter claims." *Id.* at 218, 253 S.W.3d at 437. On appeal, this court held, despite the language in the order, that the judgment had failed to dispose of the remaining defendants and that, therefore, this court was barred from considering the appeal. We hold that the present case presents an analogous situation. Though the summary-judgment order purports to dismiss appellant's complaint, it failed to dispose of the claim against Opal Aday. Therefore, the order is not a final, appealable order, and this court is barred from considering the appeal.

We note that effective January 1, 2009, this court amended Ark. R. Civ. P. 54(b) to state that any claim against a named but unserved defendant, including a "John Doe" defendant, is dismissed by the circuit court's final judgment or decree. Ark. R. Civ. P.

54(b)(5) (2011). However, this rule does not resolve the issue in the present case because the record shows that Opal Aday was served. We also note that appellant failed to include a statement in its notice of appeal that it was abandoning any pending but unresolved claim, which would have operated as a dismissal with prejudice of its claim against Opal Aday. *See* Ark. R. App. P.–Civ. 3(e)(vi) (2011).

Dismissed without prejudice.

Patterson Law Firm, P.A., by: *Jerry D. Patterson*, for appellant.

Davis Law Firm, by: *Steven B. Davis*, for appellee.