

ARKANSAS COURT OF APPEALS

No. CA08-1414

SWIFT TRANSPORTATION
COMPANY

APPELLANT

V.

JOSEPH TURNER

APPELLEE

Opinion Delivered September 2, 2009APPEAL FROM THE DREW
COUNTY CIRCUIT COURT,
[NO. CV2005-64-3]HONORABLE ROBERT BYNUM
GIBSON, JR., JUDGE

DISMISSED

PER CURIAM

Appellee Joseph Turner filed a negligence suit against appellant Swift Transportation Co., claiming that one of Swift's tractor-trailers ran him off the road and caused him serious injury. The jury found for Turner and awarded him six million dollars. Swift appeals, but we must dismiss the appeal for lack of a final order. In doing so, we direct Swift to include certain additional matters in its addendum, in the event it elects to refile the appeal.

Joseph Turner sued Swift in March 2005. Thereafter, the circuit court allowed Turner's employer and the employer's workers' compensation carrier to intervene in the case. The intervenors alleged that they had paid Turner approximately \$345,000 in workers' compensation benefits and that they were entitled to a lien on any settlement or recovery that Turner might obtain. Following a trial, the jury awarded Turner six million dollars in damages against Swift, and the court entered judgment for that amount. However, the court did not

rule on the intervenors' complaint. Instead, the court attached the following certificate to the judgment, pursuant to Ark. R. Civ. P. 54(b):

Rule 54(b) Certificate

With respect to the issues determined by the above JUDGMENT, the court finds that the subrogation claim of the Intervenor remains open and unresolved.

Upon the basis of the foregoing factual finding, the court hereby certifies, in accordance with Rule 54(b)(1), ARCVp, that it has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the judgment shall be a final judgment for all purposes.

Swift appeals from the judgment that contained the certificate. However, as we will explain, the certificate did not comply with Rule 54(b), and the judgment is therefore not final and appealable.

An order that adjudicates fewer than all of the claims in a case is not a final judgment. *See S. Farm Bureau Cas. Ins. Co. v. Easter*, 369 Ark. 101, 251 S.W.3d 251 (2007). More specifically, an order that does not resolve an intervenor's claim is not final and appealable. *See Schubert v. Target Stores, Inc.*, 2009 Ark. 89; *Richardson v. Rodgers*, 329 Ark. 402, 947 S.W.2d 778 (1997). Rule 54(b) of the Arkansas Rules of Civil Procedure permits entry of a final judgment in some instances where the court has disposed of fewer than all of the parties' claims, but the court must execute a proper Rule 54(b) certificate to do so. The rule requires an express determination, "supported by specific factual findings," that there is no just reason for delay, and the certificate must contain "the factual findings upon which the determination to enter the judgment as final is based." Ark. R. Civ. P. 54(b)(1). The factual findings must demonstrate that a likelihood of hardship or injustice will occur unless there is an immediate

appeal, and the court must set forth facts to support its conclusion. *Davis v. Wausau Ins. Co.*, 315 Ark. 330, 867 S.W.2d 444 (1993).

Here, the Rule 54(b) certificate contains no specific factual findings explaining why a hardship or injustice would result if an immediate appeal were not permitted. The certificate therefore does not meet the requirements of Rule 54(b) and is not sufficient to certify the appeal. See *Follett v. Fitzsimmons*, 100 Ark. App. 347, 268 S.W.3d 902 (2007); *Rutledge v. Christ Is The Answer Fellowship, Inc.*, 82 Ark. App. 221, 105 S.W.3d 816 (2003); *Stouffer v. Kralicek Realty Co.*, 81 Ark. App. 89, 98 S.W.3d 475 (2003). Accordingly, we must dismiss the appeal for lack of finality. The dismissal is without prejudice to refile at a later date. *Follett, supra*.

We also take this opportunity to address certain deficiencies in the appellant's addendum. See *Schubert, supra*. An addendum must contain any relevant pleadings, documents, or exhibits essential to an understanding of the case and the court's jurisdiction on appeal. Ark. Sup. Ct. R. 4-2(a)(8). If Swift refiles its appeal, its addendum must include, along with materials already contained therein, the following matters: a final order and a timely notice of appeal therefrom; the plaintiff's complaint; the defendant's answer; the complaint in intervention; the order allowing intervention; the jury's verdict form; any motions for an extension of time to file the record; and any orders allowing an extension of time to file the record. Additionally, one of Swift's arguments concerns the admissibility of a DVD depicting a recreation of the accident. The DVD is in the record but is not in the addendum. Swift must either reproduce copies of the DVD in its addendum or file a motion asking this court

for a waiver. Ark. Sup. Ct. R. 4-2(a)(5).

Appeal dismissed.