

REL: 11/16/2007

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2007-2008

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ArvinMeritor, Inc.

v.

Warren Handley

**Appeal from Fayette Circuit Court
(CV-03-142)**

MOORE, Judge.

ArvinMeritor, Inc. ("the employer"), appeals from a judgment of the Fayette Circuit Court awarding Warren Handley permanent-total-disability benefits. We remand the case for

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the trial court to consider certifying the judgment as final pursuant to Rule 54(b), Ala. R. Civ. P.

Facts

On November 17, 2003, Handley, along with several hundred other plaintiffs, filed a complaint against the employer and several of its managers seeking workers' compensation benefits and civil damages on account of exposure to toxic chemicals in the workplace. The plaintiffs amended their complaint to add over 100 additional plaintiffs and 64 more corporate defendants. The trial court subsequently entered a summary judgment in favor of the managers on all of the plaintiffs' claims and in favor of the employer on all of the plaintiffs' claims except for the workers' compensation claims. Additionally, other claims remain pending against other corporate defendants.

The employer subsequently moved for a summary judgment on Handley's workers' compensation claim. The trial court denied that motion. On May 18, 2006, the trial court ordered that Handley's workers' compensation claim be tried separately pursuant to Rule 42, Ala. R. Civ. P. On July 26, 2006, the trial court entered a judgment awarding Handley permanent-

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total-disability benefits. From that judgment, the employer appealed.

Discussion

"We first consider whether we have jurisdiction over this appeal, because 'jurisdictional matters are of such magnitude that we take notice of them at any time and do so even ex mero motu.'" Wallace v. Tee Jays Mfg. Co., 689 So. 2d 210, 211 (Ala. Civ. App. 1997) (quoting Nunn v. Baker, 518 So. 2d 711, 712 (Ala. 1987)).

This court has jurisdiction over appeals from workers' compensation judgments, see Ala. Code 1975, § 25-5-88(e) and § 12-3-10, but only if they are final judgments. See Norment Sec. Group v. Chaney, 938 So. 2d 424 (Ala. Civ. App. 2006). A final judgment is a judgment that conclusively determines all the issues before the court and ascertains and declares the rights of all the parties involved. See Garner v. Decatur Utils., 709 So. 2d 1309, 1310 (Ala. Civ. App. 1998). A judgment that does not resolve all the claims asserted by all the parties is an interlocutory order that will not support an appeal. See Stone v. Haley, 812 So. 2d 1245, 1246 (Ala. Civ. App. 2001). The judgment in this case conclusively determined

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all the claims that Handley had asserted against the employer; however, the judgment did not dispose of the remaining claims asserted by the hundreds of other plaintiffs against the employer and the other corporate defendants. Therefore, the judgment is not final.

The judgment against the employer on Handley's workers' compensation claim would have been final had the trial court severed Handley's claim from the remaining claims and assigned that claim a separate civil action number. See Rule 21, Ala. R. Civ. P. ("Any claim against a party may be severed and proceeded with separately."). After severance, the only claim before the trial court would have been Handley's workers' compensation claim against the employer, and the trial court's July 26, 2006, judgment conclusively decided that claim. However, the trial court did not effectuate a severance of Handley's workers' compensation claim by simply ordering a separate trial under Rule 42. See Certain Underwriters at Lloyd's, London v. Southern Natural Gas Co., 939 So. 2d 21 (Ala. 2006). Hence, Handley's workers' compensation claim remains part of the action in which the claims of several hundred other plaintiffs have not been adjudicated.

Under Rule 54(b), "[w]hen more than one claim for relief is presented in an action, ... 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 that there is no just reason for delay and upon an express direction for entry of judgment." Absent a Rule 54(b) certification, the judgment entered in favor of Handley did not terminate the action and the judgment therefore remains subject to revision at any time before final adjudication. See Rule 54(b). In this case, the trial court did not certify its July 26, 2006, judgment as final pursuant to Rule 54(b). Ordinarily, we would dismiss this appeal as being from a nonfinal judgment; however, we elect to exercise our discretion to remand the case for 28 days so that the trial court may certify the judgment as final pursuant to Rule 54(b), if appropriate, so as to allow for the exercise of our appellate jurisdiction. See Bridges v. Bridges, 598 So. 2d 935, 936 (Ala. Civ. App. 1992).

On remand, the burden is on the employer, as the party seeking immediate appellate review of a judgment that does not adjudicate all the claims of all the parties, to make a

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showing as to why it is necessary that appellate review of the judgment be conducted before termination of the entire case.

See Brown v. Whitaker Contracting Corp., 681 So. 2d 226, 229 (Ala. Civ. App. 1996) (overruled on other grounds by Schneider Nat'l Carriers, Inc. v. Tinney, 776 So. 2d 753 (Ala. 2000)).

If it is convinced that there is no just reason for delay, the trial court may certify the July 26, 2006, judgment as final under Rule 54(b) so that this court may assert its appellate jurisdiction. Failure by the trial court to make a return to this court within 28 days from the date of the release of this opinion shall result in the dismissal of this appeal as being from a nonfinal judgment.

REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Pittman, Bryan, and Thomas, JJ., concur.