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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200132

Alabama Insurance Underwriting Association

v.

Suzanne Peoples Skinner

Appeal from Mobile Circuit Court
(CV-17-901787)

MITCHELL, Justice.

After a fire at James and Suzanne Skinner's house, their insurer sought a judgment declaring that it did not owe either of them coverage.

The circuit court entered summary judgment for Suzanne while the claim against James remained pending. A year later, with the claim against James still pending, the circuit court certified the judgment in Suzanne's favor as final and thus immediately appealable under Rule 54(b), Ala. R. Civ. P. Because the circuit court exceeded its discretion in doing so, we set aside the Rule 54(b) certification and dismiss this appeal.

Facts and Procedural History

In November 2016, a fire damaged the Skinners' house in Chunchula. The Alabama Insurance Underwriting Association ("AIUA"), which insured the house, investigated the fire and came to believe that it was caused by arson. AIUA further concluded that James Skinner and Don Dockery were the only two people in the house when the fire began, and thus the only two possible arsonists.

AIUA filed a complaint in the Mobile Circuit Court against the Skinners and Dockery, claiming alternatively that: (1) if James started the fire, neither Suzanne nor James was owed coverage under their insurance policy; and (2) if Dockery started the fire, he owed damages to

AIUA to compensate it for its outlay in covering the Skinners' loss. The parties later agreed to dismiss Dockery from the case.

Suzanne moved for summary judgment, contending that even if her husband James had started the fire, his guilt had no bearing on AIUA's coverage obligation to her. The circuit court agreed, ruling that: (1) the language of the insurance policy did not exclude coverage to Suzanne based on the alleged arson of James acting alone; and (2) to the extent the policy purported to do so, that exclusion was void as against public policy under Hosey v. Seibels Bruce Group, 363 So. 2d 751 (Ala. 1978). Accordingly, the circuit court entered summary judgment for Suzanne. A year later, with the claim against James's estate still pending,[1] the circuit court -- on its own initiative and without explanation -- certified the summary judgment in favor of Suzanne as final under Rule 54(b). AIUA timely appealed to this Court.

[1]James died during the course of this litigation. His estate was substituted for him as a defendant.

Standard of Review

We review the certification of a judgment as final under Rule 54(b) to determine whether the trial court exceeded its discretion. Cox v. Parrish, 292 So. 3d 312, 315 (Ala. 2019).

Analysis

As a threshold matter, we must address whether the circuit court exceeded its discretion in authorizing this appeal. This Court will scrutinize the propriety of Rule 54(b) certifications even in cases where no party addresses this "fundamental issue." Summerlin v. Summerlin, 962 So. 2d 170, 172 (Ala. 2007); see also Cox, 292 So. 3d at 315; Wright v. Harris, 280 So. 3d 1040, 1043 (Ala. 2019); Richardson v. Chambless, 266 So. 3d 684, 686 (Ala. 2018). Here, Suzanne argues that the certification was improper, and AIUA offers no defense of the circuit court's action.

We agree with Suzanne. A trial court may certify as final a judgment disposing of one or more, but fewer than all, claims or parties in an action, if it determines that there is no just reason for delay in enabling an appeal. Rule 54(b). But, as this Court has repeatedly emphasized, Rule 54(b) provides only a narrow exception to the "policy

disfavoring appellate review in a piecemeal fashion." Smith v. Slack Alost Dev. Servs. of Alabama, LLC, 32 So. 3d 556, 562-63 (Ala. 2009). Accordingly, "Rule 54(b) certifications should be entered only in exceptional cases." Wright, 280 So. 3d at 1047 (citing Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 363 (Ala. 2004)).

Piecemeal appeals are particularly inappropriate when the issues on appeal may be mooted by resolution of the remaining claims. See, e.g., Cox, 292 So. 3d at 315-16; Richardson, 266 So. 3d at 687-88; Lighting Fair, Inc. v. Rosenberg, 63 So. 3d 1256, 1264-65 (Ala. 2010). And that is the case here. The circuit court's summary judgment holds that Suzanne is owed coverage even if James started the fire. That holding makes a difference only if, in its still-pending claim against James's estate, AIUA establishes that James did start the fire. On the other hand, if AIUA cannot prove that, then it will not matter if the circuit court erred in granting Suzanne's motion for summary judgment; Suzanne will be owed coverage anyway.

In Richardson, this Court held that a near-identical relationship between claims was "dispositive" against Rule 54(b) certification. 266

So. 2d at 689. There, the plaintiff had originally sued one defendant on claims arising from an allegedly faulty home inspection and later amended his complaint to add a fraudulent-transfer claim against another defendant. See id. at 685-86. The circuit court entered summary judgment for the latter defendant and certified it under Rule 54(b). Id. at 686. But this Court set the certification aside and dismissed the appeal, reasoning that if the original defendant later prevailed against the plaintiff on the claims against him, the fraudulent-transfer claim would necessarily fail too. Id. at 689-90.

Here, as in Richardson, "it is readily apparent that future developments in the trial court" could moot the issues presented in this appeal. Id. at 689-90. Neither the circuit court nor the parties have pointed to any considerations to overcome this " 'major negative in the Rule 54(b) equation.' " Lighting Fair, 63 So. 3d at 1265 (quoting Spiegel v. Trustees of Tufts Coll., 843 F.2d 38, 45 (1st Cir. 1988)). Indeed, as mentioned, the circuit court gave no reasons for its sua sponte certification, and no party offers any reasons in defense of that action. We see nothing in the record to suggest that this case is one of the exceptional

instances in which a piecemeal appeal might be appropriate. We therefore conclude that the circuit court exceeded its discretion in certifying the summary judgment for Suzanne as final for purposes of appeal.

Conclusion

We set aside the Rule 54(b) certification of the summary judgment and dismiss this appeal for lack of jurisdiction. See Dzwonkowski, 892 So. 2d at 363 ("A nonfinal judgment will not support an appeal."). In doing so, we express no opinion about the merits of the judgment or the legal issues involved.

APPEAL DISMISSED.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.