

SUPREME COURT OF ARKANSAS

Duffield v. Benton County Stone Co., Inc.

369 Ark. 314 (2007) (Ark. 2007) · No. No. 06-1329 · Decided April 5, 2007

SUMMARY

The Supreme Court of Arkansas held that an order granting permissive intervention while denying intervention as a matter of right was not immediately appealable. Because the landowners were permitted to participate in the litigation and could seek review after final judgment, the court dismissed the appeal without prejudice for lack of a final, appealable order.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Donald L. Corbin
JURISDICTION	Arkansas
DECIDED	April 5, 2007
DOCKET	No. 06-1329
DISPOSITION	dismissed
PROCEDURAL POSTURE	The landowners appealed an order granting them permissive intervention under Arkansas Rule of Civil Procedure 24(b) for the limited purpose of litigating res judicata, while denying intervention as a matter of right under Rule 24(a)(2).
STANDARD OF REVIEW	Whether an order is final and appealable is a jurisdictional question reviewed by the appellate court; the court raises the issue on its own. The denial of permissive intervention is otherwise reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	O.F. Duffield, Sue Ann Duffield, Frederic Dohle, Bertha Dohle, James Dohle, Katherine Dohle, Richard Lubera, Jr., Karen Lubera, Mike Wishon v. Benton County Stone Company, Inc., Benton County Planning Board, Benton County, Arkansas

TOPICS

- intervention
- appellate jurisdiction
- interlocutory appeal
- final judgment rule
- civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

municipal law

QUESTIONS PRESENTED

1. Whether an order granting permissive intervention under Arkansas Rule of Civil Procedure 24(b), while denying intervention as a matter of right under Rule 24(a)(2), is immediately appealable under Arkansas Rule of Appellate Procedure–Civil 2(a).

HOLDINGS

1. An order granting permissive intervention under Rule 24(b) but denying intervention as a matter of right under Rule 24(a)(2) is not immediately appealable when the intervenor remains a party and can obtain effective review of the intervention issues after final judgment.

KEY QUOTATIONS

“In this case, for the first time, we are faced with the question of whether a trial court's order granting permissive intervention, but denying intervention as a matter of right, is immediately appealable. It is not.”
(at 729)

“Because there is not a final, appealable order, we cannot address the merits of the Landowners' appeal. Dismissed without prejudice.” (at 729)

FACTUAL BACKGROUND

The Benton County Planning Board approved Benton County Stone Company's petition to develop a rock quarry in an unincorporated area of Benton County. The landowners appealed that decision to the Benton County Appeal Review Board, which reversed the approval and denied the quarry petition based on incompatibility with surrounding uses. Benton County Stone appealed to the circuit court, and the landowners sought intervention. The circuit court permitted intervention only to argue that res judicata barred Benton County Stone's claim, while denying intervention as a matter of right.

PROCEDURAL HISTORY

The Benton County Planning Board approved Benton County Stone Company's proposed rock quarry. After the Benton County Appeal Review Board reversed that decision, Benton County Stone appealed to the Benton County Circuit Court. The landowners moved to intervene; the circuit court granted permissive intervention on a limited issue but denied intervention as of right. The Supreme Court of Arkansas dismissed the appeal because the order was not immediately appealable.

DISPOSITION

dismissed

CASES CITED

- Matson, Inc. v. Lamb & Assocs. Packaging, Inc., 328 Ark. 705, 947 S.W.2d 324 (1997)
- Cupples Farms P'ships v. Forrest City Prod. Credit Ass'n, 310 Ark. 597, 839 S.W.2d 187 (1992)
- Billabong Products, Inc. v. Orange City Bank, 278 Ark. 206, 644 S.W.2d 594 (1983)
- Corning Bank v. Delta Rice Mills, Inc., 281 Ark. 342, 663 S.W.2d 737 (1984)
- Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370, 107 S. Ct. 1177, 94 L. Ed. 2d 389 (1987)
- Hanners v. Giant Oil Co. of Ark., Inc., 369 Ark. 226, 253 S.W.3d 424 (2007)

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