IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2021-CA-00046-COA

OMAR K. HUMPHREY **APPELLANT**

v.

APPELLEES

STEVE HOLTS, CHIEF OF POLICE OF THE CITY OF SENATOBIA, AND JOHN W. CHAMPION, DISTRICT ATTORNEY

DATE OF JUDGMENT:	12/18/2020
TRIAL JUDGE:	HON. VICKI B. DANIELS
COURT FROM WHICH APPEALED:	TATE COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	IMHOTEP ALKEBU-LAN
ATTORNEY FOR APPELLEES:	JERRY WESLEY HISAW
NATURE OF THE CASE:	CIVIL - OTHER
DISPOSITION:	APPEAL DISMISSED - 11/23/2021
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE CARLTON, P.J., LAWRENCE AND EMFINGER, JJ.

EMFINGER, J., FOR THE COURT:

FACTS

¶1. Omar K. Humphrey was convicted of capital murder and sentenced to life in prison without eligibility for parole on February 11, 1998. The Mississippi Supreme Court upheld Humphrey's conviction and sentence. *Humphrey v. State*, 759 So. 2d 368 (Miss. 2000). Humphrey filed numerous petitions for post-conviction collateral relief (PCR) in the intervening years between the decision on his appeal and the present action, most of which were denied as successive PCR petitions.

¶2. In separate letters, both dated May 18, 2020, Humphrey made a Public Records Act

request to Steve Holts, the then-acting chief of police for the Senatobia, Mississippi police department, and to John Champion, the district attorney for the Seventeenth Judicial District of Mississippi, seeking a "copy and transcription" of a wire tape recording between himself and Patrick Reed,[1] a jailhouse informant; any Senatobia police reports surrounding the wiring of Reed; and certain statements Reed gave to the Senatobia police. Neither party responded to Humphrey's request.

¶3. On June 3, 2020, Humphrey filed a pro se "Complaint for Violation of the Mississippi Public Records Act of 1983" against Holts and Champion in an effort to secure discovery of the documents he had previously requested. A notice of appearance by counsel was entered on Humphrey's behalf on August 26, 2020. Summonses were issued along with subpoenas for production and inspection.[2] Holts responded, through counsel for the City of Senatobia, with a motion to dismiss and motion to quash on November 13, 2020.[3] The motion to dismiss alleged that Humphrey had failed to state a claim for which relief could be granted. In the motion to quash, the City represented that "the Senatobia Police Department is no longer in possession of the requested items, as those items, if they exist, were submitted as

[1] Patrick Reed is referred to in the record as both "Reed" and "Reid."

[2] The summonses and subpoenas are not included in the appellate record but are listed on the chancery court's docket that is included in the record. The docket shows that the summons issued to Champion was returned and that Champion was served on July 29, 2020. However, Champion entered no appearance in this matter either by answer or joinder in the City's motions.

[3] Counsel for Holts admitted at the hearing that the City "did not reply in the amount of time . . . specified by statute," citing changes in department leadership. She also advised that she "thought" the assistant chief had since replied, but no such reply appears in the record.

part of a packet of information to the District Attorney's Office for their prosecution of the matter." Humphrey responded to the motion on November 23, 2020. After a hearing, the chancery court found the records requested by Humphrey exempt from the Public Records Act and granted Holts' motion for dismissal and motion to quash. It is from this decision Humphrey appeals. We decline to consider the merits of Humphrey's claims because this Court lacks jurisdiction over this appeal.

DISCUSSION

¶4. Although not raised by the parties, this Court must determine whether the order appealed from is a final, appealable judgment:

> "Jurisdictional matters are questions of law, which we review de novo." *Maurer v. Boyd*, 111 So. 3d 690, 693 (¶10) (Miss. Ct. App. 2013) (citation omitted). "Though neither party raises the finality and appealability of the [chancellor's purportedly] final order [disposing of the parties' assets and liabilities], before addressing the merits [of this appeal,] we must consider the threshold issue of jurisdiction." *Thompson v. True Temper Sports, Inc.*, 74 So. 3d 936, 938 (¶6) (Miss. Ct. App. 2011) (citation omitted). "Generally, only final judgments are appealable." *Walters v. Walters*, 956 So. 2d 1050, 1053 (¶8) (Miss. Ct. App. 2007) (citation omitted). "A final, appealable[] judgment is one that adjudicates the merits of the controversy which settles **all issues as to all the parties** and requires no further action by the [trial] court." *Id*. (citation and internal quotation marks omitted). "When all the issues in a case or claims against all the parties are not resolved in a judgment, no appeal of right can be taken." *Thompson*, 74 So. 3d at 938 (¶6) (citation omitted).

Newson v. Newson, 138 So. 3d 275, 277 (¶6) (Miss. Ct. App. 2014) (emphasis added). Mississippi Rule of Civil Procedure 54(b) provides that "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 expressed determination . . . and upon an expressed direction for the entry of the judgment." In the absence of the "expressed determination" and

"expressed direction" required by Rule 54(b), the action is not terminated.

¶5. "If the court chooses to enter such a final order, it must do so in a definite, unmistakable manner." *Newson*, 138 So. 3d at 277 (¶7). "Absent a certification under Rule 54(b), any order in a multiple-party or multiple-claim action, even if it appears to adjudicate a separable portion of the controversy, is interlocutory." *Id*. (¶7).[4]

CONCLUSION

¶6. It appears from the record that Champion was properly served but failed to file an answer, join in Holts' motions to dismiss and quash, or file any other responsive pleading. As a result, and without addressing the merits thereof, the order entered by the chancellor did not resolve Humphrey's claim against Champion and therefore was not a "final" order from which an appeal may be taken. We dismiss for lack of an appealable judgment.

¶7. **APPEAL DISMISSED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, WESTBROOKS, McDONALD, LAWRENCE, McCARTY AND SMITH, JJ., CONCUR.

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[4] In this case, the chancellor did not designate her order as a Rule 54(b) judgment as would be required to constitute an appealable judgment. *See Wilton Acquisitions Corp. v. First Methodist Church of Biloxi*, 85 So. 3d 319, 324 (¶12) (Miss. Ct. App. 2012) ("[D]espite the chancellor's designation of his order as a Rule 54(b) judgment and despite the inclusion of the necessary wording required by Rule 54(b), we hold that the chancellor's order was not a final, appealable order because it left First Methodist's claim for attorney's fees pending."). So not only does the order not resolve all issues as they relate to Champion, the order does not comply with Rule 54(b).