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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-150

EATON AND MOERY FARMS, A PARTNERSHIP; GLEN EATON AND FONDA A. EATON, HIS WIFE; BRIAN MOERY, JR. AND CLARA N. MOERY, HIS WIFE APPELLANTS/CROSS-APPELLEES V. ESTATE OF GEORGE HAMILTON LESCHER, DECEASED APPELLEE/CROSS-APPELLANT	**Opinion Delivered** January 18, 2012 APPEAL FROM THE CROSS COUNTY CIRCUIT COURT [CV-2008-51-3] HONORABLE BENTLEY E. STORY, JUDGE APPEAL DISMISSED

DAVID M. GLOVER, Judge

This is a suit by appellee, the Estate of George Hamilton Lescher, deceased (the estate), as trustee, upon a note and for foreclosure of a mortgage which secures the note. Appellant Eaton and Moery Farms, a partnership (E&M), appeals from a decree of the Cross County Circuit Court giving judgment upon the note and foreclosing the mortgage.[1] The estate cross-appeals from the circuit court's approval of E&M's supersedeas bond. We cannot, however, reach the merits of the appeal because we lack a final, appealable order.

On November 20, 1989, the George Wright Lescher Trust, through its trustee, Larry Hartsfield, sold two farms known as the Thomas Farm and the Jones Farm to E&M. E&M

[1]Glen Eaton and Brian Moery, Jr., the partners, and their wives, Fonda Eaton and Clara Moery, are also appellants in this court.

executed a note for $693,390 of the purchase price, bearing interest of 8% per annum payable in quarterly installments of $17,264.96 with the first installment due January 1, 1990. A deed of trust secured the note. Later in 1989, E&M sold the Jones farm to Halk & Halk Farms, Inc. (Halk), and financed the purchase price. While E&M gave Halk a warranty deed, the Jones Farm remained subject to the Lescher Deed of Trust.

In 1990, E&M sold the Thomas Farm to Charles E. King, Jr. In January 1994, E&M made a payment of $470,653.06 on the note to the trust from the payoff on the Thomas Farm by King. The Thomas Farm was released from the deed of trust.

In 2004, Halk wanted to sell the Jones Farm; however, E&M and Hartsfield were unable to agree on the amount of the payoff so the Jones Farm could be released from the deed of trust. The dispute centered on whether E&M made the quarterly payment of $17,264.96 when the Thomas Farm was paid off in January 1994.

The estate filed suit on March 31, 2008, seeking to foreclose on the note.[2] The complaint alleged that the balance due on the note was approximately $122,000 as of January 1, 2008. Halk was also named as a defendant in the foreclosure suit. Halk answered, asserting that it had paid all amounts due for its purchase of the Jones Farm. It also asserted a cross-claim against E&M, alleging that, if the farm were sold in foreclosure, E&M would have breached its warranties and Halk would be entitled to damages.

[2]After litigation involving Hartsfield and the beneficiaries of the George Wright Lescher Trust, Hartsfield was removed as trustee and the estate appointed a successor trustee.

The case proceeded to trial in the circuit court. On February 8, 2010, the court issued a letter opinion announcing its decision. Among its findings were that E&M had admitted the execution of the note and that E&M did not make the regular payment of $17,264.96 due on January 1, 1994. The court also directed the estate's accountant to recalculate the balance due on the note, taking into account certain findings made by the court. In a subsequent letter opinion dated April 5, 2010, the circuit court approved an amortization schedule showing the balance due to be $125,326.32. The circuit court's order was entered on July 12, 2010, and incorporated the court's letter opinions. This appeal and cross-appeal followed.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure–Civil provides that an appeal may be taken from a final judgment or decree entered by a circuit court. Whether an order is final and appealable is a matter going to the jurisdiction of the appellate court, and it is an issue that the appellate court has a duty to raise on its own motion. *Capitol Life & Acc. Ins. Co. v. Phelps*, 72 Ark. App. 464, 37 S.W.3d 692 (2001). The rule that an order must be final to be appealable is a jurisdictional requirement, observed to avoid piecemeal litigation. *Id.*

The circuit court found that Halk was entitled to a judgment against E&M conditioned upon the farm being sold to satisfy the debt due the estate. As a general rule, a conditional judgment, order, or decree, the finality of which depends upon certain contingencies which may or may not occur, is not final for the purposes of appeal. *Murphy v. Murphy*, 2011 Ark. App. 205; *Mid-State Homes, Inc. v. Beverly*, 20 Ark. App. 213, 727 S.W.2d 142 (1987).

Moreover, the amount of the judgment in favor of Halk has yet to be determined. A judgment or order is not final or appealable if the issue of damages remains to be decided. *U.S. Bank, N.A. v. Milburn*, 352 Ark. 144, 100 S.W.3d 674 (2003); *John Cheeseman Trucking, Inc. v. Dougan*, 305 Ark. 49, 805 S.W.2d 69 (1991); *Mueller v. Killam*, 295 Ark. 270, 748 S.W.2d 141 (1988); *Kilgore v. Viner*, 293 Ark. 187, 736 S.W.2d 1 (1987).

Because the order appealed from is not final, we lack jurisdiction to hear the appeal and dismiss the appeal without prejudice.

Appeal dismissed.

PITTMAN and ROBBINS, JJ., agree.

W. Frank Morledge, P.A., by: *W. Frank Morledge*, for appellants.

John Bridgforth, P.A., by: *John Bridgforth*, for appellee.