Cite as 2012 Ark. App. 181

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA11-842

		Opinion Delivered February 29, 2012
GREG SPEARS	APPELLANT	APPEAL FROM THE CRAIGHEAD COUNTY CIRCUIT COURT, WESTERN DISTRICT, [NO. DR 2009-1074]
V.		HONORABLE BARBARA HALSEY, JUDGE
WENDY SPEARS	APPELLEE	DISMISSED

LARRY D. VAUGHT, Chief Judge

In this divorce case, appellant Greg Spears challenges several circuit court rulings regarding child support, alimony, and apportionment of debt. We dismiss the appeal for lack of a final order.

Appellee sued appellant for divorce in December 2009**.** Appellant counterclaimed for divorce, and both parties sought custody of their two children. Appellee later moved with the children to McKinney, Texas, and the parties stipulated to joint custody, with appellee having primary physical custody and appellant exercising visitation. In December 2010, the circuit court held a hearing to address all remaining issues, including child support, alimony, and debt division.

Following the hearing, the court entered a document titled "Letter Opinion/Order" that granted appellee a divorce; approved the parties' child-custody arrangement; divided the

couple's property; awarded attorney fees; calculated appellant's monthly income and set child support in accordance with the Family Support Chart; awarded alimony to appellee; and assigned full responsibility to appellant for the student-loan debt he incurred as the result of his medical studies during the marriage. Appellant now appeals from the court's order and from the denial of his motion for a new trial.

We cannot reach the merits of appellant's arguments because a final decree has not yet been entered. The trial court did not dismiss or adjudicate appellant's counterclaim for divorce. Our supreme court imposes a strict requirement that, in order to achieve finality for purposes of appeal, the circuit court must dismiss or adjudicate, by written order, all of the claims filed in a lawsuit—even where it appears that the court's order necessarily rendered an outstanding claim moot or impliedly dismissed. *See, e.g.*, *Bulsara v. Watkins*, 2010 Ark. 453; *Lamco Ltd. P'ship II v. Pasta Concepts, Inc.*, 2012 Ark. App. 145. Because the counterclaim remains outstanding in this case, we must dismiss the appeal without prejudice to refile upon entry of a final decree. *Berry v. Moon*, 2011 Ark. App. 78.[1]

We further note that the circuit court's Letter Opinion/Order is more characteristic of a recitation of findings and conclusions than a formal divorce decree. The order directed appellant's counsel to prepare a formal decree "if a formal order is to be entered," and it stated that it would constitute the "Order of the court unless or *until* a formal order is entered." (Emphasis added.) A formal decree should be entered when granting a divorce. *See Mason v.*

[1]Appellant did not include a statement in his notice of appeal that he abandoned any pending but unresolved claims. Ark. R. App. P.–Civ. 3(e)(vi) (2011).

Mason, 319 Ark. 722, 733–34, 895 S.W.2d 513, 518–19 (1995) (holding that the trial court's decisions and findings set forth in a letter opinion did not constitute a final divorce decree); *Thomas v. McElroy*, 243 Ark. 465, 469, 420 S.W.2d 530, 533 (1967) (holding that a court's decisions, opinions, and findings do not constitute a judgment or decree but merely form the bases upon which the judgment or decree is subsequently to be rendered). Because we are dismissing the appeal for lack of finality, the court should now take the opportunity to enter a divorce decree.

If appellant chooses to refile his appeal, there are several deficiencies in his abstract and addendum that must be corrected. Many documents in the addendum do not contain file marks, among them the court's order and appellant's motion for a new trial. File marks on all pleadings, orders, decrees, and notices should be present and legible in the addendum so that we may understand the history of the case and confirm our jurisdiction on appeal. *Davidson v. Dunn*, 2011 Ark. App. 1; Ark. Sup. Ct. R. 4-2(a)(8)(A)(i) (2011). Appellant's addendum should also include certain omitted pleadings and exhibits that pertain to our jurisdiction and the issues on appeal, including appellant's counterclaim and the response thereto; an agreed temporary order setting forth appellant's responsibility for expenses and support payments to appellee; a stipulation as to child custody, which was an attachment to the circuit court's order; plaintiff's exhibits 3, 4, and 5 (debt list and corporate banking records); and defendant's exhibit 2 (student-loan summary). Further, all exhibits in the addendum, including those already placed there, should be replicas of the exhibits contained in the record rather than photocopies from another source. Additionally, appellant should take care to ensure that all

references to the record in his abstract and addendum reflect the proper page numbers from the record.

Finally, the record does not contain a transcript of the hearing on appellant's motion for a new trial, even though appellant designated the entire record on appeal. If the hearing was recorded and the transcript was inadvertently omitted from the record, it should be included. Ark. R. App. P.–Civ. 6(e) (2011). If the hearing was not recorded and the parties wish to include it as part of the record, they may reconstruct and settle the record at the circuit court. Ark. R. App. P.–Civ. 6(d) (2011).

Our listing of the above deficiencies should not be construed as exhaustive. We encourage appellant to review our rules, the record, and his brief prior to refiling to ensure that no other deficiencies exist.

Dismissed without prejudice.

GRUBER and GLOVER, JJ., agree.

Scott Emerson, P.A., by: *Scott Emerson*, for appellant.

Goodwin Moore, PLLC, by: *Harry Truman Moore*, and *B. Neal Burns, PLLC*, by: *NealyBurns*, for appellee.