

**ARKANSAS COURT OF APPEALS**

DIVISION III  
No. CA11-1122

DEBRA MASON

APPELLANT

V.

CHARLES MASON M.D.

APPELLEE

Opinion Delivered June 20, 2012

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
FOURTEENTH DIVISION  
[No. DR2010-1318]

HONORABLE VANN SMITH, JUDGE

DISMISSED

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**LARRY D. VAUGHT, Chief Judge**

Debra Mason appeals the decree entered on August 4, 2011, by the Pulaski County Circuit Court granting a divorce to Charles Mason M.D., dividing the parties' marital property and awarding alimony to Debra. She contends on appeal that the trial court (1) clearly erred in finding that a Scott Trade retirement account was Charles's nonmarital property, and (2) abused its discretion by awarding her an insufficient amount of alimony. Because the decree from which Debra appeals is not a final, appealable order, we lack jurisdiction to reach the merits of her appeal.

While attending college, the parties married on August 8, 1981. Debra graduated with an accounting degree and worked in that capacity while Charles pursued a degree in medicine. Charles began working as an emergency-room physician in 1986. In 1989, Debra stopped working to care for the parties' three children (now all over the age of majority) and



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manage their home. Undisputedly, Charles provided the financial support for the family.

On March 24, 2010, Charles filed a complaint for divorce. A hearing was held on October 12, 2010, after which, on November 5, 2010, the trial court issued a temporary order requiring Charles to pay spousal support in the amount of \$4500 per month. Charles was also ordered to continue to pay Debra's cell-phone bill, car- and health-insurance premiums, and the parties' country-club dues.

By the time of the final hearing held on June 21, 2011, the parties had agreed to an uncontested divorce, and Debra waived corroboration. The parties had also agreed to the division of most of their personal items. The primary issues to be determined at the final hearing were Debra's request for permanent alimony, the disposition and division of the parties' marital home, the division of the parties' retirement accounts, and debt allocation.<sup>1</sup> The trial court took the matter under advisement.

On August 4, 2011, a divorce decree was entered, granting Charles a divorce. Pertinent to this appeal, the trial court ordered Charles to pay alimony to Debra in the amount of \$3500 per month for thirty-six months and thereafter \$1500 per month for sixty months or upon Debra's remarriage, whichever occurred first. In reaching this conclusion, the trial court considered the ages of the parties,<sup>2</sup> their thirty-year marriage, and that during their marriage, Debra stayed at home to raise the parties' children and manage the household. The

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<sup>1</sup>Debra asked the trial court to award her lifetime alimony in the amount of \$12,000 per month and for an equal division of the parties' retirement accounts and equity in their home upon its sale.

<sup>2</sup>Charles was fifty-one and Debra was forty-nine.



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court found that Charles's gross income was approximately \$350,000 to \$380,000 and his monthly net income was \$16,000 to \$17,000. In contrast, the court found that Debra, an accountant who had recently returned to the workforce, had an annual gross income of approximately \$39,000. The trial court noted that the parties had lived a lavish lifestyle and that their retirement savings was approximately \$300,000. The court found that each party was to receive approximately \$150,000 from the retirement savings and anticipated that they would receive one-half of the equity of the marital home upon its sale. While dividing the parties' other assets equally, the trial court found that a Scott Trade retirement account<sup>3</sup> was not a marital asset and awarded it to Charles.

Debra filed a notice of appeal from the divorce decree. On appeal, she challenges the trial court's alimony award and the finding that the Scott Trade account was nonmarital property. However, we are unable to reach the merits of the appeal because Debra did not appeal from a final, appealable order.

Rule 2(a)(1) of the Appellate Rules of Procedure—Civil provides that an appeal may be taken from a final judgment or decree entered by the circuit court. *Roberts v. Roberts*, 70 Ark. App. 94, 95, 14 S.W.3d 529, 530 (2000). When the order appealed from is not final, this court will not decide the merits of the appeal. *Roberts*, 70 Ark. App. at 95, 14 S.W.3d at 530. Whether a final judgment, decree, or order exists is a jurisdictional issue that this court has a duty to raise, even if the parties do not, in order to avoid piecemeal litigation. *Id.*, 14 S.W.3d at 530. The test of finality and appealability of an order is whether the order puts the court's

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<sup>3</sup>This account was valued at approximately \$13,000.



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directive into execution, ending the litigation or a separable part of it. *Villines v. Harris*, 362 Ark. 393, 397, 208 S.W.3d 763, 766 (2005). For a judgment to be final, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Roberts*, 70 Ark. App. at 95, 14 S.W.3d at 530–31. Where the order appealed from reflects that further proceedings are pending, which do not involve merely collateral matters, the order is not final. *Villines*, 362 Ark. at 398, 208 S.W.3d at 766. Even though an issue on which a court renders a decision might be an important one, an appeal will be premature if the decision does not, from a practical standpoint, conclude the merits of the case. *Farrell v. Farrell*, 359 Ark. 1, 4, 193 S.W.3d 734, 736 (2004).

In the present case, the divorce decree awarded alimony and provided for the division of some of the parties' property. However, it did not dispose of all of the parties' property:

10. Marital Home. The parties own a home in Ferndale, Arkansas, which has an appraised value of approximately \$1.2 million. The debt on the home is approximately \$650,000.

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12. The parties have listed the property for sale approximately one year ago but there have been no offers. The parties' realtor has recommended that they reduce the price to approximately \$900,000.

13. [Charles] requests that the Court order the property sold by the Circuit Clerk of Pulaski County, Arkansas. [Debra] requests that the parties have additional time to sell the property since the equity in the home is substantial and it will help fund the retirement account of both parties.

14. The Court orders that the parties continue trying to sell the home for a period of six (6) months from the entry of this Decree. . . .

15. If the property has not sold at the conclusion of six (6) months, either party may ask that the property be sold by the Circuit Clerk of Pulaski County, Arkansas.



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The Court will then determine if the property is to be sold by the Clerk or continue to be sold by private sale. . . .

It is clear from the language of the decree that the trial court has not yet entered a final, appealable order because the decree did not make a final disposition regarding the parties' marital home. The decree did not end the litigation or conclude the parties' rights in this divorce because it permitted them to return to the trial court in six months to request a determination of how to proceed with disposing of the marital home (by public or private sale). Thus, this decree undeniably contemplates further proceedings to clarify and decide the issues concerning the marital home. It has been held that dismissal for lack of a final, appealable order was appropriate where the order made the final disposition of the marital residence dependent on contingencies that may or may not occur. *Carek v. Carek*, 2011 Ark. App. 770, at 2–3; *Farrell*, 359 Ark. at 4–5, 193 S.W.3d at 736.

Our rules of civil procedure provide a way to obtain a final order on fewer than all the claims or all the parties. One who seeks such a final order is required under Arkansas Rule of Civil Procedure 54(b) to move the trial court for an express determination, supported by specific factual findings, that there is no just reason for delay and for express direction for entry of judgment on the matter to be appealed. *Farrell*, 359 Ark. at 5, 193 S.W.3d at 736 (citing Ark. R. Civ. P. 54(b)(1) (2011)). Rule 54(b) is applicable to property-division issues in divorce cases. *Farrell*, 359 Ark. at 5, 193 S.W.3d at 736. There is no Rule 54(b) certificate in the record of this case.

Accordingly, it is premature for this court to consider the issues raised by Debra before



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the trial court has entered its final order on the matter. Therefore, we do not have jurisdiction to consider this appeal, and we dismiss it without prejudice.

Dismissed.

ROBBINS and ABRAMSON, JJ., agree.

*Digby Law Firm*, by: *Bobby R. Digby II*, for appellant.

*Hilburn, Calhoun, Harper, Pruniski & Calhoun, LTD.*, by: *Sam Hilburn* and *Scott Hilburn*,  
for appellee.