Cite as 2010 Ark. App. 158

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 09-627

TRACEY LILLEY TRAFFORD
APPELLANT

V.

DENNIS LILLEY; SUZANNE LILLEY SAKEVICIUS and ZACK SAKEVICIUS, HUSBAND AND WIFE, OZARK CAPITAL CORPORATION; and PALISADES COLLECTION, LLC
APPELLEES

Opinion Delivered FEBRUARY 17, 2010

APPEAL FROM THE CONWAY COUNTY CIRCUIT COURT, [NO. CV2007-176]

HONORABLE DAVID H. McCORMICK, JUDGE

APPEAL DISMISSED

JOHN B. ROBBINS, Judge

Appellant Tracy Trafford brings this one-brief appeal from an order entered by the Circuit Court of Conway County in a partition case. We cannot reach the merits and must dismiss the appeal because the partition order is not a final order.

Appellee Dennis Lilley and his sister, appellee Suzanne Lilley Sakevicius, own as joint tenants with the right of survivorship certain real property located in Conway County. Lilley had been married to Trafford before they were divorced in 1996. Lilley filed a complaint seeking to partition the property on September 20, 2007. In addition to Sakevicius and her husband, Zack Sakevicius, Trafford was also named as a defendant because she had a lien for

unpaid child support. Other defendants named in the complaint were Ozark Capital Corporation and Chase Manhattan Bank, both of whom held judgment liens against Lilley.[1]

Trafford answered the complaint and asserted that she had a claim for child support that was superior to the judgment liens held by Ozark, Chase, or any other judgment creditor of Lilley. Trafford also filed a counterclaim against Dennis Lilley and a cross-claim against Ozark and Chase, asserting that she should be entitled to all of Lilley's share of the proceeds from the sale of the property because the unpaid child support was a lien on the property pursuant to Arkansas Code Annotated section 9-14-230 (Repl. 2008). Trafford later amended her counterclaim and cross-claim to assert that the judgment liens held by Ozark and Chase never attached to the property. Ozark denied that Trafford's lien was superior to its judgment lien.

In disposing of the case, the court issued two orders. In the first, which was later amended on Trafford's motion to correct a mistake in the listing of the order of the parties, the court found that Trafford had a lien for unpaid child support pursuant to Arkansas Code Annotated section 9-14-230 and that the lien for all child-support payments that fell due between the entry of the divorce decree, March 22, 1996, and May 25, 2000, when Ozark obtained its judgment against Lilley were superior to the judgment liens held by Ozark and Palisades. The court also held that the lien for all child-support payments that fell due between the entry of the divorce decree and April 26, 2001, when Palisades's predecessor in interest

[1]Chase's judgment was later purchased by appellee Palisades Collection, LLC. For purposes of this opinion, we omit discussion of the procedure by which Palisades was brought into the case.

obtained its judgment, were superior to Palisades's judgment lien. The court also found that any child-support payments that accrued after Ozark and Palisades obtained their judgments were inferior to those judgment liens.

The court also entered an order granting Lilley's petition for partition. The court found that the property was not divisible in kind and ordered the property sold within 180 days by private sale or listing. If the property was not sold within that time, the property would be sold by the clerk. The court also found that Suzanne Sakevicius held a one-half interest that was not to be subject to the lien claims.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure–Civil provides that an appeal may be taken only from a final judgment or decree entered by the circuit court. The question of whether an order is final and subject to an appeal is a jurisdictional issue that this court will raise on its own. *Moses v. Hanna's Candle Co.*, 353 Ark. 101, 110 S.W.3d 725 (2003). The supreme court has specifically held that a decree ordering partition either in kind or by a sale and division of the proceeds is not a final order from which an appeal may be taken. *Bell v. Wilson*, 298 Ark. 415, 768 S.W.2d 23 (1989); *see also Rigsby v. Rigsby*, 340 Ark. 544, 11 S.W.3d 551 (2000); *Looney v. Looney*, 336 Ark. 542, 986 S.W.2d 858 (1999); *Kinkead v. Spillers*, 327 Ark. 552, 940 S.W.2d 437 (1997); *Magness v. Commerce Bank of St. Louis*, 42 Ark. App. 72, 853 S.W.2d 890 (1993). In both *Kinkead* and *Magness*, the appellate courts indicated that the proper order from which to file an appeal in a partition action is the order

confirming the sale of the property. However, there has been no sale of the property in the present case. Therefore, the appeal is premature.

Rule 54(b)(1) of the Arkansas Rules of Civil Procedure allows a circuit court, when it finds no just reason for delaying an appeal, to direct the entry of a final judgment as to fewer than all of the claims or parties by executing a certification of final judgment. Absent this required certification, any judgment, order, or other form of decision that adjudicates fewer than all of the claims or the rights and liabilities of fewer than all of the parties shall not terminate the action. Ark. R. Civ. P. 54(b)(2). No such certification was made in this case.

Because Trafford has appealed from an order that is not final, the appeal must be dismissed without prejudice.

Appeal dismissed.

GLOVER and MARSHALL, JJ., agree.

Trafford Law Firm, by *Win Trafford*; *Robinson, Zakrzewski & Achorn, P.A.*, by: *Luke Zakrzewski*, for appellant.

No response.