

ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-13-804

EDWARD STEVEN NIX, SR.
APPELLANT

V.

PHYLLIS DIANE NIX
APPELLEE

Opinion Delivered MARCH 12, 2014

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. DR-2012-594(II)]

HONORABLE ANNIE HENDRICKS,
JUDGE

APPEAL DISMISSED

BILL H. WALMSLEY, Judge

Appellant Edward Nix appeals from the decree of divorce from his wife, appellee Phyllis Nix. He argues that the trial court erred in finding that a car was appellee's nonmarital property and erred in failing to equitably divide his pension payments. We dismiss the appeal for lack of a final order.

Rule 2(a)(1) of the Rules of Appellate Procedure—Civil provides that an appeal may be taken from a final judgment or decree entered by the trial court. When the order appealed from is not final, this court will not decide the merits of the appeal. *Wadley v. Wadley*, 2010 Ark. App. 733. Whether a final judgment, decree, or order exists is a jurisdictional issue that we have the duty to raise, even if the parties do not, in order to avoid piecemeal litigation. *Id.*

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. *Id.* Thus, the order must put the trial court's directive into execution, ending the litigation or a separable branch of it. *Id.* An order is not final when it adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties. *Id.* Moreover, where the order appealed from reflects that further proceedings are pending, which do not involve merely collateral matters, the order is not final. *Id.*

In *Wadley*, the divorce decree contained the following provision:

Unless otherwise specified herein, the parties shall have sixty (60) days from entry of this DECREE OF DIVORCE to agree upon a disposition of the remaining items of marital property. Any property division not agreed upon within the sixty (60) days shall be sold by public auction, with the parties responsible for hiring an auctioneer and advertising said sale. Any and all proceeds from the sale of the property, after the costs of the auctioneer and advertising shall be equally divided between the parties.

Id. at 2. This court noted that

[t]he trial court's decree left matters undecided between the parties, e.g., whether they will agree on identification of "the remaining items of marital property"; whether they will agree to a division; and if not, whether they will agree on which auctioneer to be selected and commission arrangement; and whether they will agree on the sale date, place and terms of sale.

Id. at 2–3. We held that the divorce decree was not a final order because the relief granted was in part conditioned upon the actions of the parties, and the record did not show what actions the parties had taken with respect to the disposition of the remaining items of marital property. *Wadley, supra.* We noted that, as a general rule, a conditional judgment, order, or decree, the finality of which depends on certain contingencies that may or may not occur, is not a final order for purposes of appeal. *Id.*

In the case at bar, paragraph four of the divorce decree stated, in part, the following:

The Court further finds that the parties owned certain real estate which constitutes the marital home. This property should be listed for sale immediately with an agreed upon realtor and listing price. The parties shall be equally responsible for the major repairs pending a sale however Ms. Nix will be responsible for any ordinary wear and tear and utilities. . . .

Paragraph seven stated that

[t]he Court finds that all of the property including but not limited to the Montana Fifth Wheel, the 2012 Arctic Cat, Ranger Boat motor and trailer all of which are on Schedule C are marital property. The parties shall have thirty days to reach an agreement regarding the division of marital personal property listed in Schedule C, otherwise the property shall be sold at private auction.

Several matters have been left undecided between the parties, including whether they will agree on a realtor and listing price; whether they will agree on what constitutes a major repair and what constitutes ordinary wear and tear; whether they will reach an agreement regarding the remaining personal property; and whether they will agree on a date, place, and terms of sale for a private auction.

As in *Wadley*, the relief granted was in part conditioned upon the future actions of the parties that may or may not occur. Thus, there is no final, appealable order.

Appeal dismissed.

GRUBER and GLOVER, JJ., agree.

Hayes, Alford & Johnson, PLLC, by: *Joel D. Johnson*; and
H. Barret Marshall, Jr., for appellant.

Smith, Cohen & Horan, PLC, by: *Matthew T. Horan*; and
Law Office of Eddie N. Christian, by: *Eddie N. Christian*, for appellee.