Cite as 2011 Ark. App. 236

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 10-1061

	Opinion Delivered MARCH 30, 2011
STEPHANIE FEAGIN APPELLANT	APPEAL FROM THE WHITE COUNTY CIRCUIT COURT [NO. CV 2009-771]
V.	HONORABLE THOMAS HUGHES, JUDGE
SHAWN JACKSON APPELLEE	APPEAL DISMISSED

JOHN B. ROBBINS, Judge

Stephanie Feagin appeals and Shawn Jackson cross-appeals from an order entered by the White County Circuit Court in a partition case. We cannot reach the merits and must dismiss the appeal and cross-appeal for lack of a final order.

On December 22, 2008, Farrell Marshall and Sandra Marshall executed and delivered a warranty deed to appellant Stephanie Feagin and appellee Shawn Jackson. The property consisted of three lots in the Southern Hills Estates subdivision in White County. The parties were in a dating relationship at the time of the conveyance, and Ms. Feagin paid the entire purchase price of $150,072.73. On April 6, 2009, the parties sold one of the lots for $37,000, and installments toward the purchase price were thereafter paid to Ms. Feagin. Sometime later the parties' relationship ended, and they separated.

Ms. Feagin instituted the present action on October 8, 2009, when she filed a complaint on debt and for reformation of the deed. In her complaint, Ms. Feagin alleged that Mr. Jackson's name was mistakenly placed on the warranty deed as a grantee, and that it was never her intention that Mr. Jackson be designated as an owner of the subject property. As a result, Ms. Feagin prayed that the warranty deed be reformed to reflect that she was the sole purchaser and grantee of the property. Ms. Feagin also alleged that she loaned $30,000 to Mr. Jackson on January 6, 2009, which remained unpaid, and she prayed for a judgment against him in that amount.

On November 2, 2009, Mr. Jackson filed an answer and counterclaim for partition. Mr. Jackson asked that Ms. Feagin's complaint be denied. In his counterclaim, Mr. Jackson asked for an equal division of the two lots that were still owned by the parties.

Ms. Feagin answered Mr. Jackson's counterclaim on November 10, 2009, wherein she asserted:

> Plaintiff/Counterdefendant states affirmatively that Defendant/Counterclaimant, paid no sums toward the initial purchase of the subject real property, has paid no portion of the real estate taxes on the subject real property, and has personally expended no sums toward the improvement of the subject real property. That to partition the real property or to sell the real property and divide the sale proceeds equally between the parties would constitute unjust enrichment on the part of the Defendant/Counterclaimant.

On January 6, 2010, Ms. Feagin filed an amended complaint wherein she acknowledged that the conveyance of the subject property to both parties was not a mistake, but that her payment of the entire purchase price for the property was not a gift to Mr. Jackson and that

Mr. Jackson had no equitable interest in the property. Ms. Feagin prayed for $75,000, which represented one-half of the purchase price, plus $30,000 for the unpaid loan, for a total judgment of $105,000 against Mr. Jackson.

After a bench trial, the trial court entered a judgment on July 8, 2010, that contained the following pertinent findings. The trial court found that on December 22, 2008, Ms. Feagin paid the $150,000 purchase price for subject property and voluntarily caused title to the property to be conveyed by warranty deed to her and Mr. Jackson as joint tenants with right of survivorship. The trial court further found that there was no fraud or undue influence on the part of Mr. Jackson, and that the voluntary conveyance was valid and caused a grant of title of a one-half undivided interest to each of the parties. The trial court ordered the parties' property, consisting of the remaining two lots, sold and the proceeds divided between the parties. The trial court also ruled that Mr. Jackson was entitled to one-half of the payments received by Ms. Feagin from the sale of the other lot, and that the parties were to share equally in the future proceeds of that sale. The trial court found that Mr. Jackson had performed landscaping and clearing, as well as labor in connection with improvements made to an existing building on the property, but that such work was in the nature of a gift to Ms. Feagin with no expectation of monetary compensation. Finally, the trial court awarded Ms. Feagin a $30,000 judgment against Mr. Jackson for the unpaid loan, to be paid from Mr. Jackson's share of the proceeds from the sale of the real estate.

Ms. Feagin timely appealed, and Mr. Jackson timely cross-appealed, from the judgment of the trial court. On direct appeal, Ms. Feagin argues that the trial court's decision granting Mr. Jackson one-half of the proceeds from the sale of property paid for entirely by her was clearly erroneous and improperly applied the law relating to unjust enrichment. On cross-appeal, Mr. Jackson argues that, in the event Ms. Feagin prevails in her appeal, his defense of accord and satisfaction should be applied to discharge the $30,000 judgment to Ms. Feagin. Specifically, Mr. Jackson maintains that Ms. Feagin agreed to accept the payments toward the $37,000 sale price of the lot that they sold in full satisfaction of his $30,000 debt.

Both the appeal and cross-appeal are premature. 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 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 Peterson v. Davis*, 2010 Ark. App. 794; *Trafford v. Lilley*, 2010 Ark. App. 158; *Washington v. Washington*, 2010 Ark. App. 16. In both *Kinkead v. Spillers*, 327 Ark. 552, 940 S.W.2d 437 (1997), and *Magness v. Commerce Bank of St. Louis*, 42 Ark. App. 72, 853 S.W.2d 890 (1993), 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. In the present case, the trial court ordered the parties' real property sold, but there has been no sale of the property. Therefore, the trial court's order is not final.

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 the order being appealed from in this case is not final, the appeal and cross-appeal must be dismissed without prejudice.

Appeal dismissed.

HART and HOOFMAN, JJ., agree.