

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA 09-243

JOHNNY PRUITT AND TONI PRUITT
APPELLANTS

V.

DICKERSON EXCAVATION, INC.
APPELLEE

Opinion Delivered December 16, 2009

APPEAL FROM THE FRANKLIN
COUNTY CIRCUIT COURT
[NO. CV-2007-116]

HONORABLE JAMES DANIEL
KENNEDY, JUDGE

APPEAL DISMISSED; MOTION MOOT

COURTNEY HUDSON HENRY, Judge

Appellants Toni and Johnny Pruitt appeal from an order entered by the Franklin County Circuit Court ruling that appellee, Dickerson Excavation, Inc. (Dickerson), is entitled to a materialmen's lien and a judgment in the amount of \$30,000. Appellants raise five issues on appeal, while appellee presents one point on cross-appeal. Because the order from which the parties have appealed is not a final order, we must dismiss the appeal.

This case involves an agreement regarding Dickerson's construction of pads for four turkey houses on appellants' property. After a dispute arose over the amount of money owed under the contract, Dickerson filed a materialmen's lien against appellants' property. Thereafter, appellants filed suit against Dickerson seeking damages for slander of title. Dickerson then filed a counterclaim to foreclose the lien. The trial court granted Dickerson's



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motion for summary judgment on appellants’ complaint. After a bench trial, the trial court entered an order finding that Dickerson was “entitled to a lien against the property in question” and that Dickerson was “entitled to a judgment in the amount of \$30,000.” Both parties have appealed from this order.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil provides that an appeal may be taken from a final judgment and decree entered by the circuit court. Whether an order is final and appealable is a matter that concerns our jurisdiction to hear the appeal and is an issue that we are obligated to raise on our own. *Dobbs v. Dobbs*, 99 Ark. App. 156, 258 S.W.3d 414 (2007). In order for a decree to be final, it must be of such a nature as to not only decide the rights of the parties, but to put the court’s directive into immediate execution, ending the litigation or a separable part of it. *Festinger v. Kantor*, 264 Ark. 275, 571 S.W.2d 82 (1978). A decree that orders a judicial sale of property and places the court’s directive into execution is a final and appealable order. *Alberty v. Wideman*, 312 Ark. 434, 850 S.W.2d 314 (1993).

In applying these principles to the case at bar, we recognize that the trial court’s order does not meet the test of finality. The order provides that Dickerson is “entitled” to a lien and judgment, but it does not foreclose the lien or direct a sale of the property. Consequently, the order is not subject to an appeal, because it only settles the rights and liabilities of the parties but does not place the court’s directive into execution. *See Alberty*,



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supra; *Festinger, supra*; *Davie v. Davie*, 52 Ark. 227, 12 S.W. 558 (1889). Consequently, we must dismiss the appeal without prejudice for the lack of a final order.

Dismissed.

BAKER and BROWN, JJ., agree.

Walters and Gaston, Attorneys at Law, by: *Bill Walters*, for appellants.

Ledbetter, Cogbill, Arnold & Harrison, LLP, by: *R. Chris Parks* and *Victor L. Crowell*, for appellee.