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ARKANSAS COURT OF APPEALS

No. CA09-922

GREENWAY LAND COMPANY, INC., APPELLANT V. BETH IMBODEN HINCHEY, APPELLEE	**Opinion Delivered** 14 APRIL 2010 APPEAL FROM THE CROSS COUNTY CIRCUIT COURT [NO. CV-2007-76-3] THE HONORABLE BENTLEY E. STORY, JUDGE DISMISSED WITHOUT PREJUDICE

PER CURIAM

Beth Hinchey owned an undivided one-sixth interest in a 628.82 acre tract of land in Cross County. Greenway Land Company owned the other five-sixths of the property. Greenway petitioned to have the parcel partitioned in-kind due to alleged conflicts between Greenway and Hinchey over the property's division. The circuit court appointed three commissioners to determine whether the land could be divided. Due to the location of certain improvements on the property, the commissioners concluded that an in-kind partition was impossible. Greenway immediately sought an order approving the commissioners' report and ordering the sale of the property.

Hinchey, however, objected to the commissioners' report and requested a hearing. At the hearing, Hinchey said that she had inherited the land from her father

and that her family had owned property in the area for years. She sought the southwest corner of the southwest quarter of the property. This parcel did not contain any of the improvements or frontage. The value of the parcel Hinchey sought was less than a one-sixth share of the value of the entire property. The circuit court, after viewing the property, agreed with Hinchey's proposal. It granted her the parcel, an easement, and certain Farm Service Administration benefits. Greenway appeals.

We must dismiss Greenway's appeal, however, because the circuit court's order is not final. Ark. R. App. P.–Civ. 2(a). The order states: "Said lands be, and are hereby, partitioned in kind, with the Defendant to receive 104.80 acres thereof in the southwest corner of the southwest quarter of the section, legal description to be established by survey, and the Plaintiff to receive the remainder of said lands." This is the only description in the record of the property that Hinchey is to receive under the order.

The supreme court dealt with a similar situation in *Petrus v. Nature Conservancy*, 330 Ark. 722, 957 S.W.2d 688 (1997). In that case, the chancery court's order did not contain a legal description of the disputed property, and both the court and the parties contemplated that the legal description would be provided by a future survey. The supreme court dismissed Petrus's appeal because the order was not final and his appeal therefore premature. 330 Ark. at 727, 957 S.W.2d at 690. In so holding, the supreme

court reiterated the long-standing rule that the "decree must describe the boundary line between disputing land owners with sufficient specificity that it may be identified solely by reference to the decree." 330 Ark. at 725, 957 S.W.2d at 689. It further held that "leaving those lines to be established by a future survey may likely result in additional disputes, litigation, and appeals." 330 Ark. at 726, 957 S.W.2d at 690. The court stated that the purpose of the rule is to "discourage[ ] piecemeal litigation." *Ibid.* This court has followed *Petrus*. *Penland v. Johnston*, 97 Ark. App. 11, 242 S.W.3d 635 (2006).

We note a line of cases where, despite an order's deficient property description, the appellate court has decided the merits, and then remanded for the inclusion of a more specific legal description in the order. *See, e.g.*, *Rice v. Whiting*, 248 Ark. 592, 452 S.W.2d 842 (1970); *Boyster v. Shoemake*, 101 Ark. App. 148, 272 S.W.3d 139 (2008); *Adams v. Atkins*, 97 Ark. App. 328, 249 S.W.3d 166 (2007); *Johnson v. Jones*, 64 Ark. App. 20, 977 S.W.2d 903 (1998); *Jennings v. Burford*, 60 Ark. App. 27, 958 S.W.2d 12 (1997). But the legal descriptions in the orders in those cases were more fulsome than the one in this case, and most referenced an already performed survey. *E.g.*, *Rice*, 248 Ark. at 599, 452 S.W.2d at 845–46; *Boyster*, 101 Ark. App. at 153, 272 S.W.3d at 143–44; *Adams*, 97 Ark. App. at 337, 249 S.W.3d at 173; *Jennings*, 60 Ark. App. at 36 n.1, 958 S.W.2d at 17 n.1; *cf. Johnson*, 64 Ark. App. at 28, 977 S.W.2d at

907 (no survey mentioned, but dispute about easement in an existing driveway with width unspecified). Unlike in *Petrus*, remand was appropriate in those cases because there was nothing left to do—the circuit court merely needed to tweak the decree to reflect the existing record. *E.g.*, *Jennings*, 60 Ark. App. at 36 n.1, 958 S.W.2d at 17 n.1.

This case is like *Petrus*: the current legal description is inadequate, and an order containing an adequate description cannot be entered until a survey is done. We therefore dismiss Greenway's appeal without prejudice because the current order is not final. Ark. R. App. P.–Civ. 2(a); *Petrus*, 330 Ark. at 727, 957 S.W.2d at 690; *Penland*, 97 Ark. App. at 14, 242 S.W.3d at 637.

Dismissed without prejudice.