

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA 10-281

MICHAEL WADLEY

APPELLANT

V.

ELIZABETH MAE WADLEY

APPELLEE

Opinion Delivered NOVEMBER 3, 2010

APPEAL FROM THE WHITE
COUNTY CIRCUIT COURT
[NO. DR-07-434]

HONORABLE CRAIG HANNAH,
JUDGE

DISMISSED ON DIRECT APPEAL AND
ON CROSS-APPEAL

JOHN B. ROBBINS, Judge

Appellant Michael Wadley appeals from the November 20, 2009, decree of divorce from his wife, appellee Elizabeth Mae Wadley. On appeal, Dr. Wadley argues that the trial court abused its discretion in ordering him to pay permanent alimony of \$2000 per month. Dr. Wadley also contends that the trial court clearly erred in its valuation of his veterinary clinic, and in awarding Mrs. Wadley \$270,000 for her interest in the clinic. Mrs. Wadley has cross-appealed, arguing that the trial court clearly erred in failing to award her an interest in a certificate of deposit acquired by Dr. Wadley using marital funds during the marriage. Because the divorce decree is not a final, appealable order, we dismiss the appeal and cross-appeal.

Rule 2(a)(1) of the Appellate Rules of 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. *Roberts v. Roberts*, 70 Ark. App. 94, 14 S.W.3d 529 (2000). 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. *Farrell v. Farrell*, 359 Ark. 1, 193 S.W.3d 734 (2004). Moreover, where the order appealed from reflects that further proceedings are pending, which do not involve merely collateral matters, the order is not final. *Roberts, supra.*

In the present case, the divorce decree awarded alimony and provided for the division of some of the parties’ property. However, it also 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.

The 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. The relief granted was in part conditioned upon the actions of the parties, and the record does not show what actions the parties have taken with respect to the disposition of the remaining items of marital property. 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. See *Mid-State Homes, Inc. v. Beverly*, 20 Ark. App. 213, 727 S.W.2d 142 (1987). Because there has been no final, appealable order entered in this case, the appeal and cross-appeal are dismissed.

Appeal dismissed; cross-appeal dismissed.

HART and GRUBER, JJ., agree.