

Cite as 2018 Ark. App. 531

**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. CV-18-56

SUPHA XAYPRASITH-MAYS  
APPELLANT/CROSS-APPELLEE

V.

WILLIAM R. WALLACE  
APPELLEE/ CROSS-APPELLANT

Opinion Delivered: October 31, 2018

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. 04CV-16-1682]

HONORABLE ROBIN F. GREEN,  
JUDGE

APPEAL DISMISSED WITHOUT  
PREJUDICE

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**WAYMOND M. BROWN, Judge**

Appellant Supha Xayprasith-Mays appeals from a judgment entered by the Benton County Circuit Court in a partition case. Her issues on appeal are (1) whether the court improperly ordered that the outstanding balance owed by appellee to Chase Bank for the purchase of the mortgaged properties be paid from the proceeds of the sale of the properties in a way as to require appellant to contribute one-half (1/2) of the outstanding balance when she is not a party to the notes and when to do so contravenes the statute of frauds codified at Ark. Code Ann. § 4-59-101; (2) whether requiring appellant to contribute to appellee's expenses incurred between September 22, 2006, and November 9, 2013, contravenes the statute of limitations, codified at Ark. Code Ann. § 16-56-105; (3) whether the court's order that the property be sold in a way that required any purchaser to buy all

three properties simultaneously violates Ark. Code Ann. § 18-602-420(d)(1); (4) whether a deed granted to two persons, silent as to the percentage of ownership of each cotenant, bestows an undivided equal, or 50 percent (50%) ownership interest to each cotenant; and (5) whether the court's order that attorney fees to appellee's counsel be paid solely from appellant's share of the proceeds violates Ark. Code Ann. § 18-60-419(a)(1). Appellee William Wallace cross-appeals, contending that the trial court erred when it did not allocate the excess proceeds proportionately to the rights of the parties. We cannot reach the merits of the parties' appeals and must dismiss because the partition order is not a final order.

In *Trafford v. Lilley*,<sup>1</sup> we stated:

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil provides that an appeal may be taken only 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 *Rigsby v. Rigsby*, 340 Ark. 544, 11 S.W.3d 551 (2000); *Looney v. Looney*, 336 Ark. 542, 986 S.W.2d 858 (1999); *Kinkead v. Spillers*, 327 Ark. 552, 940 S.W.2d 437 (1997); *Magness v. Commerce Bank of St. Louis*, 42 Ark. App. 72, 853 S.W.2d 890 (1993). In both *Kinkead* and *Magness*, 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. However, there has been no sale of the property in the present case. Therefore, the appeal is premature.

In the present appeal, there has been no sale of the property and no order confirming the sale has been filed. Accordingly, we dismiss the appeal as premature.<sup>2</sup>

Appeal dismissed without prejudice.

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<sup>1</sup>2010 Ark. App. 158, at 3–4.

<sup>2</sup>See *Peterson v. Davis*, 2010 Ark. App. 794.

ABRAMSON and HARRISON, JJ., agree.

*Mays, Byrd & Associates, P.A.*, by: *Tiffany Mays O'Guinn*, for appellant/cross-appellee.

*Conner & Winters, LLP*, by: *Todd P. Lewis*, for appellee/cross-appellant.