

ARKANSAS COURT OF APPEALS

DIVISION II

No. CV-21-508

DONALD BANKS

APPELLANT

V.

PETRO BANKS

APPELLEE

Opinion Delivered October 19, 2022

APPEAL FROM THE MONROE
COUNTY CIRCUIT COURT
[NO. 48CV-21-8]

HONORABLE DANNY GLOVER,
JUDGE

AFFIRMED

BRANDON J. HARRISON, Chief Judge

Donald Banks appeals from an amended order partitioning in kind roughly four hundred acres in Monroe County among those heirs of Elsenda Banks who appeared at a hearing on Petro Banks’s petition. Other heirs named in the petition, including Donald, did not appear. Donald entered an appearance through counsel and filed a notice of appeal after the partition order was entered. He argues the order is void ab initio because, for one thing, the record includes no affidavit of diligent inquiry to support the circuit court’s warning order. *See, e.g., XTO Energy v. Thacker*, 2015 Ark. App. 203, 467 S.W.3d 161.

Similar defects in proceedings to adjudicate interests in real property have been held, under various theories, to be noticeable sua sponte on appeal. *See Koonce v. Mitchell*, 341 Ark. 716, 19 S.W.3d 603 (2000). But we conclude that we cannot review for those defects or reach Donald’s arguments. He did not participate in the circuit court proceedings or seek relief of any kind there before bringing this appeal. *See Ark. Dep’t of*

Hum. Servs. v. Egbosimba, 2019 Ark. App. 608, at 3 n.2 (citing *Sun Gas Liquids Co. v. Helena Nat'l Bank*, 276 Ark. 173, 633 S.W.2d 38 (1982)). Consequently, the points raised in Donald's principal brief on appeal were not preserved for review.

Affirmed.

ABRAMSON and HIXSON, JJ., agree.

Robert S. Tschiemer, for separate appellant Donald Banks.

Petro Banks, pro se appellee.