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ARKANSAS COURT OF APPEALS

DIVISION III

No. CV-22-106

MADIHA SHAHID
APPELLANT/CROSS-APPELLEE

V.

ASIF MASOOD
APPELLEE/CROSS-APPELLANT

Opinion Delivered March 15, 2023

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTEENTH DIVISION
[NO. 60DR-20-2357]

HONORABLE SHAWN J. JOHNSON,
JUDGE

MOTION TO DISMISS WITHOUT
PREJUDICE GRANTED

WAYMOND M. BROWN, Judge

Appellant/cross-appellee Madiha Shahid and appellee/cross-appellant Asif Masood both appeal from a decree of divorce entered by the Pulaski County Circuit Court on October 27, 2021, granting Shahid an absolute divorce from Masood. Both parties allege that the circuit court committed several errors, requiring reversal. On May 4, 2022, Shahid filed a motion for remand or dismissal without prejudice contending that the divorce decree was not a final order because the circuit court failed to divide certain marital property: a Fidelity investment account, a Simmons Bank business account, a Simmons Bank personal account, and a Bank of America joint account. Masood argued against dismissal, contending that language contained in the divorce decree made it a final, appealable order. We agree

that the order appealed from is not final, and we grant Shahid's motion to dismiss without prejudice.

As part of an exhibit created for the circuit court, Shahid presented a chart reflecting that the above accounts had over \$140,000 in them.¹ She sought to have the accounts divided equally; however, Masood asked the circuit court to award him the money in those accounts if he was going to be solely responsible for the marital debt. Masood's attorney conceded that the Fidelity account contained \$40,000 and stated that the account was actually an IRA and a brokerage account. The parties also discussed division of the household furniture and furnishings, and Shahid's attorney said that they were agreeable to selling the marital home and stated:

The household furniture and furnishings do need to be divided. More likely than not, we will need to do an A list and a B list because I really do not think these people even have the ability to sit down and divide that, that property. And I think probably the best mechanism to accomplish that is to do an A list or a B list.

....

So, so, historically, what we have done is one party divides the property into two lists, an A list and B list. And the other party gets to choose which list is theirs. And, so, the idea is you don't know which list the other party is going to pick, so you will fairly divide the property between those two lists.

The circuit court entered a letter opinion, and the divorce decree was filed on October 27.

As it relates to the motion before us, the decree stated in pertinent part:

23. All other personal property not referenced in this letter ruling or agreed to by the parties shall be incorporated into 'A' and 'B' lists assembled by [Shahid],

¹Fidelity account—\$42,579; Simmons business account—\$70,000; Simmons personal account—\$30,000; and Bank of America joint account—\$1,000.

who shall provide the list to [Masood] to select one of the lists. The list chosen by [Masood] shall become the sole and separate property of [Masood] free from any right, title or claim by [Shahid]. The other list shall become the sole and separate property of [Shahid], free from any right, title, or claim by [Masood]. The Parties are encouraged to cooperate with each other in giving access to the items of personal property in the marital residence and at both Parties' respective residence. Each party shall have a right to inspect the property prior to the preparation of the A/B lists.

....

25. [Masood's] retirement account shall be divided equally between the Parties. The account shall be divided pursuant via a Qualified Domestic Relations Order to be submitted to the Court within six (6) months of the date of entry of the Decree. [Shahid] shall be entitled to any earnings or losses on her portion of the retirement account from the date of division until the date of segregation.

Shahid timely filed her notice of appeal on November 24; Masood timely filed his notice of cross-appeal that same day. However, before this case was submitted, Shahid filed her motion for remand or dismissal without prejudice. The motion, having been passed until now, will be addressed first.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure–Civil provides that an appeal may be taken from a final judgment or decree entered by a circuit court. The finality of a circuit court's judgment or decree is a jurisdictional requirement, and its purpose is to avoid piecemeal litigation.² For a decree to be final and appealable, it must dismiss the

²*Roach v. Roach*, 2019 Ark. App. 34, 571 S.W.3d 487.

parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy.³

Shahid contends that the divorce decree is not a final order because the circuit court did not divide the marital bank accounts and an investment account. Masood argues that the language found in paragraph 23 of the decree addresses how those accounts should be divided. However, we are not convinced that the circuit court intended to include those financial accounts in paragraph 23 because the paragraph mentions property in the parties' individual and marital residences, and it also gives the parties a right to inspect the property before the lists are prepared. Additionally, the lists were suggested by Shahid's attorney as an equitable way to divide the household furniture and furnishings of the marital home before it is sold since the parties could not seem to agree on anything. While the circuit court addressed how Masood's retirement account was to be divided, it failed to mention the other accounts or whether they should be equally divided, such as the retirement account. This case is similar to *Potter v. Potter*,⁴ where we dismissed for lack of jurisdiction after holding that the circuit court's omission of marital real estate from the decree was likely an oversight, and the uncertainty regarding the property did not conclude the parties' rights to the subject matter in controversy. The circuit court's omission in this case is also likely due to an oversight, and the same uncertainty exists here as it relates to how the marital

³*Davis v. Davis*, 2016 Ark. 64, 487 S.W.3d 803.

⁴2022 Ark. App. 170, 643 S.W.3d 848.

financial accounts should be divided. Accordingly, we grant Shahid's motion to dismiss without prejudice because the divorce decree is not final.

Motion to dismiss without prejudice granted.

VIRDEN and GRUBER, JJ., agree.

The Applegate Firm, PLLC, by: Kayla M. Applegate, for appellant/cross-appellee.

Castleberry Law Firm, PLLC, by: Kenneth P. "Casey" Castleberry; and Dodds, Kidd, Ryan & Rowan, by: Lucas Z. Rowan, for appellee/cross-appellant.