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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-22-643

DELORES ANN RAWLS APPELLANT V. JESSE MALVERN RAWLS APPELLEE	**Opinion Delivered** February 28, 2024 APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [No. 26DR-20-317] HONORABLE RALPH C. OHM, JUDGE DISMISSED WITHOUT PREJUDICE

BRANDON J. HARRISON, Chief Judge

This is an appeal from a divorce decree. Delores and Jesse Rawls, age 78 and 84 at the final hearing, married in February 1993. They had lived mostly apart since November 2009—Jesse, on a forty-three-acre property in Pine Bluff he had inherited from his parents but renovated during the marriage and deeded to them both; Delores, at a home in Hot Springs they had bought during the marriage. The pair shuttled back and forth for visits. We don't know why they decided to stop. Delores pleaded eighteen months' separation as grounds for divorce. Jesse countersued for a divorce based on general indignities, but only Delores provided corroborating proof. Ark. Code Ann. § 9-12-306(c)(1) (Repl. 2020); *see Olson v. Olson*, 2014 Ark. 537, at 10, 453 S.W.3d 128, 134. Property division and support were the disputed issues.

At the final hearing, the circuit court noted the presumption that "all marital property shall be distributed one-half to each party, unless the court finds such a division to be inequitable," Ark. Code Ann. § 9-12-315(a)(1)(A) (Repl. 2020), and orally ruled that most of

it—including Delores's home in Hot Springs and a seventeen-acre parcel adjoining Jesse's property in Pine Bluff—would be sold and evenly divided. The court asked for written argument about dividing the forty-three-acre parcel in Pine Bluff and an annuity Jesse had purchased in 2008 by rolling over a retirement account he contended included some premarital contributions. The court orally ruled that the divorce would be granted to Delores. It directed Jesse's trial counsel to draft a decree. Jesse notes that the record "does not reflect exactly what happened afterward," but a decree was submitted, and the court entered it.

The decree is irregular. It grants Jesse, not Delores, the divorce. It does not state the grounds, just that "jurisdiction and grounds have been proven and corroborated and an absolute divorce is hereby granted to [Jesse,] the Defendant." The decree orders that "the parties shall immediately sell all personal property unless specifically addressed," and "[t]he Hot Springs Village home shall be sold immediately," with the net proceeds evenly split. The court found Delores "shall retain ownership of the personal property from the home in Hot Springs Village," while Jesse would retain the personal property from "the Pine Bluff home."

The decree does not include a more specific description of either property. The testimony put Delores's home in Hot Springs, not Hot Springs Village. Jesse acknowledges that the decree did not dispose of it. We don't know if Delores's personal property from the Hot Springs home has been sold. The decree does not address the seventeen-acre Pine Bluff parcel, even imperfectly, though Jesse had conceded it was marital property and asked the court to order it sold.

We cannot address Delores's arguments that the circuit court erred in making this property division because the decree is not final.[1] To be final, a judgment must "dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy." *Myers v. Yingling*, 369 Ark. 87, 88, 251 S.W.3d 287, 289 (2007). The order must not only decide the parties' rights but also "put the court's directive into execution, ending the litigation or a separable part of it." *Id.*

First, as Jesse's appellate counsel appropriately admits, the decree did not dispose of all marital real property. In *Potter v. Potter*, we held that the omission of one jointly titled parcel made a divorce decree nonfinal. 2022 Ark. App. 170, 643 S.W.3d 848. The appellant in *Potter* pointed out the omission in her opening brief, as Delores's counsel did here. The seventeen-acre parcel, at minimum, was not addressed.

Vague descriptions of property the decree does address have left the parties disagreeing about whether more remains undistributed. Even if there was proof the parties owned a home in Hot Springs Village, describing it as "the Hot Springs Village home" would fall short of the specificity we ordinarily require in a judgment that could affect title to real property. A decree settling the boundary between two landowners, for example, must describe the boundary line "with sufficient specificity that it may be identified solely by reference to the decree." *Petrus v. Nature Conservancy*, 330 Ark. 722, 725, 957 S.W.2d 688, 689 (1997). Persons other than the parties might need to know what property a decree affects. For example, when a circuit court decrees a conveyance of real estate, the party favored by the decree must record a copy within

[1]On 11 January 2023, we denied two motions in which Delores identified these finality defects and asked the court for time to file a motion under Arkansas Rule of Civil Procedure 60 to correct the errors and omissions in the decree.

one year in the county where the lands sit. Ark. Code Ann. § 16-65-116(a) (Repl. 2005). Otherwise, the decree "shall be void as to all subsequent purchasers without notice."[2] Arkansas Rule of Civil Procedure 70 assumes the court will have a sufficient property description to transfer or divest title in the property directly if a party refuses to comply with the judgment:

> If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the jurisdiction of the court, in lieu of directing a conveyance thereof, it may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

Ark. R. Civ. P. 70.

A provision that might or might not divide the annuity is similarly unclear. The circuit court orally ruled that the parties would divide the annuity to split the difference between the value of the annuity on the date of the divorce (about $328,000) and the value of Jesse's former retirement account when they married in 1993. In the corresponding part of the decree, the court begins by finding Delores "is entitled to one-half (1/2) of Defendant's retirement account that was acquired during the marriage" and ends by finding that she "is entitled to one half of the contributions made during the marriage"—about $31,000 of roughly $101,500

[2] *Id.* Later on the day this decree was entered, Delores's counsel filed a notice of attorney's lien and a lis pendens against a property identified as "Lot 42 of the Ridges (Phase I) at Belvedere Country Club, according to the plat thereof recorded in Plat Book 5 at Page 85 of the Public Records of Garland County, Arkansas," commonly known by the Hot Springs address where Delores testified she lived.

contributions in total—"which equals 15.3 percent." It is not clear whether the court was dividing the existing annuity or measuring a monetary award by Jesse's past contributions to a closed retirement account.

Dividing marital property can require the court to navigate property law, contract law, business law, tax law, trust law, decedents' estates—and other subjects besides—just to decide what each party owns. The record includes numerous motions for contempt and motions to compel, but no indication that the property-division issues the parties asked the circuit court to decide at the final hearing had been itemized or briefed beforehand. Neither point makes this divorce case unusual, unfortunately.

Currently, there is no statewide requirement that property division proceed with any more regularity than the parties choose to muster. And we're in no position to impose one.[3]

Dismissed without prejudice.

WOOD and MURPHY, JJ., agree.

Gregory E. Bryant, for appellant.

The Applegate Firm, PLLC, by: *Ryan J. Applegate* and *Kala M. Applegate*, for appellee.

[3]In this setting, party agreements can be hard to come by. *E.g.*, *Potts v. Potts*, 2016 Ark. App. 127 (Hixson, J., dissenting) ("[I]t appears from the record that this divorce was the type of divorce that gives divorces a bad name. The parties could not, or at least did not, agree on virtually anything.").