

Cite as 2024 Ark. App. 180
ARKANSAS COURT OF APPEALS
DIVISION IV
No. CV-22-728

WANDA STEWART WOODS
APPELLANT

V.

LEONARD W. WOODS
APPELLEE

Opinion Delivered March 13, 2024

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. 43CV-20-238]

HONORABLE SANDY HUCKABEE,
JUDGE

DISMISSED WITHOUT PREJUDICE

RAYMOND R. ABRAMSON, Judge

Wanda Stewart Woods appeals the Lonoke County Circuit Court order partitioning her personal and real property with her former spouse Leonard W. Woods. We cannot reach the merits and must dismiss the appeal for lack of a final order.

On August 7, 2013, the Pulaski County Circuit Court entered a divorce decree for Wanda and Leonard. The decree stated that there was no property to be adjudicated.

On March 11, 2020, Leonard petitioned for partition and sale of personal and real property against Wanda in the Lonoke County Circuit Court. He stated that he and Wanda own as tenants in common real and personal property that included two residences and a car, and he alleged that they had been unable to reach an agreement on the distribution of the property. He cited Arkansas Code Annotated section 28-52-115 (Repl. 2012) and section

18-60-401 (Repl. 2015), and he asked the court to order that the property be sold and the proceeds be equally divided after reimbursement for his costs.

The court held a hearing on July 8, 2022, and on August 4, the court entered a judgment. The court found that the parties' interests in the property should have been adjudicated in their divorce but were not. The court concluded that because their interests were not adjudicated in the divorce, the parties own the property as tenants in common. The court further found that the parties are unable to share the use of the property and that partition cannot be made without great prejudice. Thus, the court ordered that the property be sold at auction and that the proceeds be equally divided. The court additionally found the property was not heir property, and it further found neither party provided sufficient proof of entitlement to credits. Wanda appealed the judgment to this court.

We must dismiss the appeal for lack of a final order. 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. 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);

Charles v. Ellis, 2021 Ark. App. 277; *Peterson v. Davis*, 2010 Ark. App. 794; *Magness v. Commerce Bank of St. Louis*, 42 Ark. App. 72, 853 S.W.2d 890 (1993).

In both *Kinkead* and *Magness*, the 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. *See also Charles*, 2021 Ark. App. 277; *Peterson*, 2010 Ark. App. 794. Because there has been no sale of the property in this case, the appeal is premature.

Rule 54(b)(1) of the Arkansas Rules of Civil Procedure allows a circuit court, when it finds no just reason for delaying an appeal, to direct the entry of a final judgment as to fewer than all the claims or parties by executing a certification of final judgment. Absent this required certification, any judgment, order, or other form of decision that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action. Ark. R. Civ. P. 54(b)(2). No certification was made in this case.

Because there is no final, appealable order, we must dismiss the appeal without prejudice. *Charles*, 2021 Ark. App. 277; *Peterson*, 2010 Ark. App. 794.

Dismissed without prejudice.

VIRDEN and THYER, JJ., agree.

Evelyn L. Moorehead, for appellant.

Willard Proctor Jr., P.A., by: *Willard Proctor, Jr.*, for appellee.