

McILROY BANK & TRUST *v.* James ZUBER and
Patricia L. ZUBER, Husband and Wife

81-254

629 S.W. 2d 304

Supreme Court of Arkansas
Opinion delivered March 22, 1982

APPEAL & ERROR — FINAL & APPEALABLE ORDER — STANDARD. — An order transferring a suit from law to equity, or the reverse, is not appealable, inasmuch as it is well established that before a judgment is final and appealable it must dismiss the parties from the court, discharge them from their action or conclude their rights to the subject matter in controversy.

Appeal from Washington Chancery Court, *John Lineberger*, Judge; dismissed.

William Russell Gibson, of Pettus, Johnson & Gibson,
for appellant.

James L. Carson, for appellee.

STEELE HAYS, Justice. Appellant filed suit against appellees in the Chancery Court of Washington County on two promissory notes, secured by articles of personal prop-

erty, seeking foreclosure, sale and deficiency judgment. Appellees moved to dismiss the complaint under Rule 12H (3), A. R. Civ. P., on the ground the court lacked jurisdiction. Appellant responded that it could sue in equity to foreclose its security interest. The chancellor found he lacked subject matter jurisdiction and transferred the suit to circuit court. Appellant appeals.

We do not reach the merits of this appeal as the order appealed from is not final and therefore, not appealable. See Rule 2 (a) 2, Ark. Rules of Appellate Procedure. It is well established that before a judgment is final and appealable it must dismiss the parties from the court, discharge them from their action or conclude their rights to the subject matter in controversy. An order transferring a suit from law to equity, or the reverse, is not appealable. *Hyatt v. City of Bentonville*, 275 Ark. 210, 628 S.W. 2d 326 (1982); *Heber Springs Lawn and Garden, Inc. v. FMC Corp.*, 275 Ark. 260, 628 S.W. 2d 563 (1982).

Appeal dismissed.
