

Sam A. ELARDO and Edward RICHMOND v. Mike
TAYLOR

86-221

726 S.W.2d 1

Supreme Court of Arkansas
Opinion delivered March 23, 1987
[Rehearing denied April 27, 1987.]

APPEAL & ERROR — FINAL AND APPEALABLE JUDGMENT — WHAT CONSTITUTES. — 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 Phillips Chancery Court; *John Pittman*, Chancellor; appeal dismissed.

W. Frank Morledge, P.A., for appellants.

Daggett, Van Dover, Donovan & Cahoon, by: *Jimason J. Daggett*, for appellee.

JACK HOLT, JR., Chief Justice. Appellants, Sam Elardo and Edward Richmond, and appellee, Mike Taylor, were jointly and severally liable to First National Bank for a \$53,146.43 judgment entered on a promissory note they had given the bank. Taylor paid the judgment in its entirety, received a court order assigning the judgment from the bank to him, and began executing on the judgment against the appellants. The appellants made a motion

to the trial court to stay execution and, ultimately, to vacate the judgment, because of continuing legal controversies between the appellants and Taylor arising from the same transaction, which they argued could provide a defense to the judgment. The trial court denied the motion, holding the assignment was valid under Ark. Stat. Ann. § 29-123 (Repl. 1979). The court stated, however, that it would grant a hearing on any defenses the appellants could assert to Taylor's enforcement of the judgment. Because the order is not a final appealable order under Ark. R. App. P. 2, we dismiss the appeal.

[1] "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." *McIlroy Bank & Trust v. Zuber*, 275 Ark. 345, 629 S.W.2d 304 (1982). See Ark. R. App. P. 2(a)(2).

The appellants are not appealing from the judgment itself as entered in favor of First National Bank, but from the denial of the motion to set aside the assignment of the judgment. The assignment is only part of an ongoing lawsuit between these parties stemming from the dissolution of the corporation created by Taylor and the appellants. The appellants also have a petition for judgment pending against Taylor in the same case and involving the same transaction. For these reasons, and because the trial court said it would hear any defenses the appellants had to the judgment, the order is not final and appealable.

Appeal dismissed.
