

Opinion delivered March 1, 1954.

1. APPEAL AND ERROR—EQUITY—FINAL JUDGMENT.—The order of a Chancery Court overruling a motion to dismiss a divorce proceeding for lack of a *bona fide* residence is not a final judgment.
2. APPEAL AND ERROR—FINAL ORDER.—This Court has always held, before and ever since the adoption of the Code, that, where there is no final judgment, no appeal lies, and that an appeal will be dismissed for want of a final judgment.

Appeal from Garland Chancery Court; *Sam W. Garratt*, Chancellor; appeal dismissed.

*M. C. Lewis, Jr.*, for appellant.

*Earl J. Lane, Michael B. Heindl* and *Q. Byrum Hurst*, for appellee.

ROBINSON, J. Appellee Arthur H. Wicker filed a divorce suit in the Garland Chancery Court. Appellant Studie Crump Wicker, defendant in the Chancery Court, filed a motion to dismiss the cause alleging that appellee was not a *bona fide* resident of Garland County. The Chancellor overruled the motion and Studie Crump Wicker has appealed.

The order overruling the motion to dismiss was not a final judgment from which an appeal will lie. If this court should at this time sustain the Chancellor's order overruling the motion to dismiss, the case would still stand for trial on its merits. Meantime the defendant may file some other motion. An appeal can not be taken from an order of a chancery court which is not a final order. *Davis v. Hale*, 114 Ark. 426, 170 S. W. 99; *Durben v. Montgomery*, 144 Ark. 153, 221 S. W. 855; and *Beloate, Executor, v. Smith*, 212 Ark. 39, 204 S. W. 2d 908.

“This court has always held, before and ever since the adoption of the Code (1869), that, where there is no final judgment, no appeal lies, and that an appeal will be dismissed for want of a final judgment.” *Flana-*

*gan v. Drainage Dist. No. 17*, 176 Ark. 31, 2 S. W. 2d 70.

Therefore the appeal in this case is dismissed and the cause is remanded for further proceedings.

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