

## David POTTER v. Betty POTTER

85-25

690 S.W.2d 124

Supreme Court of Arkansas  
Opinion delivered June 3, 1985

APPEAL & ERROR — APPEAL NOT FROM FINAL ORDER. — Where the parties were divorced; their residence was ordered sold; appellee bought it; the sale to her was confirmed; and the confirmation is the subject of a separate appeal; appellant's appeal, from a denial without a hearing of appellant's motion for permission to occupy the house during the pendency of the appeal since appellee had moved out and to enjoin her from renting the premises to a third party, is merely a motion for the trial court to change his prior ruling which gave appellee temporary occupancy and is not a final and appealable order as defined in Ark. R. App. P. 2.

Appeal from Miller Chancery Court; *Don Langston*, Chancellor on Exchange; dismissed.

*Steel & Steel*, by: *George E. Steel, Jr.*, for appellant.

*Smith, Jernigan & Smith*, by: *Robert D. Smith*, for appellee.

DARRELL HICKMAN, Justice. What the appellant calls a petition for a temporary restraining order and injunction is, in effect, merely a request for the trial judge to change his prior ruling.

The parties were divorced in 1981, and we modified that decree in *Potter v. Potter*, 280 Ark. 38, 655 S.W.2d 382 (1983). The parties' residence was ordered sold and Mrs. Potter bought it. The sale to her was confirmed; the confirmation is the subject of a separate appeal.

[1] The appellant moved for permission to occupy the house during the pending of that appeal since Mrs. Potter had moved out and to enjoin her from renting the premises to a third party. The judge denied the request without a hearing. Although Potter characterized his prayer as one for injunctive relief, in effect, the motion asked the judge to change his prior ruling which gave Mrs. Potter temporary occupancy, ordered the home sold and confirmed the sale. The appellant's request is not a final and appealable order as defined in Ark. R. App. P. 2. If it were, all orders before, during and after a divorce decree could be

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appealed.

Appeal dismissed.

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