

RENDERED: April 10, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-2917-MR
AND 96-CA-3474-MR

MARY CYNTHIA MARTIN

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE GARLAND W. HOWARD, JUDGE
ACTION NO. 93-CI-733

PAUL JOSEPH MARTIN

APPELLEE

OPINION AND ORDER
DISMISSING APPEALS

* * * * *

BEFORE: BUCKINGHAM, KNOPF, and SCHRODER, Judges.

KNOPF, JUDGE: These are two (2) appeals from post-judgment orders in a dissolution action. Finding that the appeals are not taken from final and appealable orders, we dismiss both appeals.

The appellant, Mary Cynthia Martin (Cindy), and the appellee, Paul Joseph Martin (Paul), were married on June 6, 1970. Mary filed a petition for dissolution of marriage on June 17, 1993. The trial court entered a decree of dissolution on October 2, 1995, incorporating the property settlement agreement.

In the fall of 1996, Paul tendered a deed to Cindy for her signature transferring to him twenty-one (21) separate tracts

of real estate. Cindy took the position that four (4) of the tracts had never been addressed by the court or by the parties, and therefore were not covered under the property settlement agreement. Paul's counsel filed a motion for contempt on September 27, 1996, seeking to compel Cindy to sign the deed. The trial court referred the matter to the commissioner for a hearing. For some reason, the order, which had been tendered by Paul's counsel, contained the language: "This is a final and appealable order and no just cause for delay exists."

Based upon this recitation in the order, Cindy filed her first notice of appeal of the order. In the meantime, the commissioner conducted a hearing and concluded that the parties intended the four (4) parcels in issue to be disposed of by the property settlement agreement. The trial court overruled Cindy's exceptions by an order dated December 18, 1996. Cindy filed her second notice of appeal on December 20, 1996.

Cindy admits that the order referring the matter to the commissioner was not a final and appealable order. Consequently, the first appeal must be dismissed. Furthermore, we find no final order in the record confirming the commissioner's findings. The second appeal appears to be taken from the trial court's December 20, 1996, order overruling Cindy's exceptions.

A commissioner's report is not self-executing. It must be adopted by the trial court before it can have any effect. CR 53.06(2). See also, Eiland v. Ferrell, Ky., 937 S.W.2d 713

(1997). Until the trial court enters an order adopting the report, the findings contained therein are merely recommendations. Although the trial court overruled Cindy's exceptions to the report, the court did not enter an order adopting the commissioner's recommendation, nor did the court enter an order requiring Mary to execute the deed.¹ Consequently, the appeal is not taken from a final and appealable order as the trial court did not conclusively adjudicate the rights of any party. CR 54.01.

Accordingly, the appeals in action 96-CA-2917 and in action 96-CA-3474 are both ordered dismissed as not being taken from final and appealable orders.

ALL CONCUR.

¹ At the close of the hearing on December 16, 1996, the parties briefly discussed which attorney should prepare the order overruling Cindy's exceptions to the commissioner's report. Paul's counsel agreed to prepare the order, which was apparently done. However, the tendered order adopted by the trial court did not include any language adopting the commissioner's findings or directing Cindy to sign the deed. Although this error appears to have been inadvertent, this court is still left without a final order on which to base the appeal.

Entered: April 10, 1998

/s/ Wm. L. Knopf
Judge, Court of Appeals

BRIEF FOR APPELLANT:

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