

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-001974-MR

JOHN W. MEADOWS

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT  
HONORABLE JEFFREY L. PRESTON, JUDGE  
ACTION NO. 11-CI-00499

DELENA MEADOWS (NOW SMITH)

APPELLEE

OPINION AND ORDER  
DISMISSING THE APPEAL

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BEFORE: D. LAMBERT, THOMPSON, AND VANMETER, JUDGES.

D. LAMBERT, JUDGE: This is an appeal from the September 30, 2013 order of the Greenup Family Court interpreting a settlement agreement between the parties, which had been incorporated into their divorce decree. The order required Delena S. Meadows (“Delena”) to pay a certain sum to John W. Meadows (“John”) for his

interest in the marital home, should she sell it.<sup>1</sup> After review, however, we must dismiss the appeal.

Delena and John divorced by decree dated July 27, 2011. Their divorce decree incorporated a settlement agreement signed by both parties on July 18, 2011. The settlement agreement provided that Delena would receive the marital home along with any associated indebtedness. The settlement agreement also stated,

Should [Delena] sell the home the parties will equally split the net proceeds. However, before the split [Delena] shall be entitled to receive \$3,000.00 as reimbursement for a draw that she took from her retirement plan. The parties further agree that the home has a current appraised value in the amount of \$98,500.00. [John] shall be entitled to his share based on this appraised value. Should the home's value increase [Delena] shall receive all proceeds above this appraised value.

The family court interpreted this portion of the settlement agreement and determined that Delena was not required to sell the house at any certain time. Oddly, the family court also computed the amount of net proceeds Delena would owe John *if* she sold the home and wrote that she “may continue to try to sell the property” or pay John this amount.<sup>2</sup> The family court further stated that it would entertain a new motion from John to require Delena to pay the amount if the property was not sold in the “near future”, a statement contrary to his previous finding that she was not required to sell the home.

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<sup>1</sup> See *Herron v. Hosick*, 2014-CA-000020-MR, 2015 WL 1275410 (Ky. App. 2015) (decision rendered March 20, 2015), for a full discussion as to the ordinary meaning of the term “sold.”

<sup>2</sup> Delena agreed with the computed amount of net proceeds.

John subsequently filed a motion to alter, amend or vacate this order, and the family court overruled it. No finality language was included in either order.

Under CR<sup>3</sup> 54.01, “[a] final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, *or* a judgment made final under Rule 54.02 (emphasis added). An appeal from an order that does not conform to these requirements is interlocutory, and this Court lacks jurisdiction to consider it. *Wilson v. Russell*, 162 S.W.3d 911, 913-14 (Ky. 2005).

Here, the family court did not address when—if ever—Delena must pay John his share of the net proceeds under the settlement agreement. The order, which lacked any language of finality, only contemplated deciding the issue at an unspecified time provided the home did not sell. Accordingly, the order did not adjudicate all of the rights of all of the parties. The appeal is interlocutory and hereby dismissed.

VANMETER, JUDGE, CONCURS.

THOMPSON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

ENTERED: September 25, 2015

/s/ Debra Lambert  
Judge, Kentucky Court of Appeals

THOMPSON, JUDGE, DISSENTING: I respectfully dissent. I cannot agree that this is an interlocutory appeal.

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<sup>3</sup> Kentucky Rules of Civil Procedure.

I point out the finality language referred to in Kentucky Rules of Civil Procedure (CR) 54.02 is not applicable when there are not multiple parties or claims. As stated in *Security Federal Sav. & Loan Ass'n of Mayfield v. Nesler*, 697 S.W.2d 136, 138 (Ky. 1985):

CR 54.01 defines a final and appealable order as one which adjudicates the rights of all of the parties. CR 54.02 applies only where there are multiple claims and the court grants a final judgment upon one or more but less than all of the claims at issue.

Here, there are two parties and only the issues presented to the trial court were the amount of John's equity in the marital residence and when that amount must be paid by Delena.

To resolve the two issues, the trial court determined the amount owed to John is \$2,404.56 and ordered that Delena continue to attempt to sell the house or pay John \$2,404.56. The issues presented were finally resolved. The majority concludes the order lacked finality because it did not state when Delena must pay John his share of the equity in the residence. That is simply not factually correct. The trial court's order merely reflects the economic reality that the sale of a residence for its market value sometimes occurs quickly but often takes time. Until then, she must continue to offer the house for sale. The only other option for obtaining immediate sale proceeds would be for the house to be auctioned but, given the small amount the trial court found is owed John, a sale at auction could result in little, if any, recovery of his interest. That was not a desirable option for either party.

More importantly, John does not even present the issue of when he is to receive the amount owed but only challenges the trial court's determination of the amount. Moreover, Delena has not filed a cross-appeal challenging that portion of the order requiring that she offer the house for sale or pay John \$2,404.56. In fact, she indicates in her brief that she is willing and able to pay John \$2,404.56. At this point, the only issue is John's claim he is owed an additional amount.

The trial court fashioned its order so that the parties' modest marital estate could be finally resolved under this poorly written settlement agreement. This Court was given the opportunity to do the same by resolving the issue presented by John on its merits but has declined. By doing so, the majority has permitted this case to linger in the trial court and invites another appeal on the precise issue that has been appealed and briefed. I simply cannot agree with that result.

I would not dismiss this appeal and decide its merits.

BRIEF FOR APPELLANT:

Charles L. Douglas, Jr.  
Greenup, Kentucky

BRIEF FOR APPELLEE:

James W. Lyon, Jr.  
Greenup, Kentucky