Cite as 2011 Ark. App. 770

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-320

Opinion Delivered December 14, 2011

DANA T. CAREK
APPELLANT

V.

CHARLES C. CAREK, III
APPELLEE

APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT
[No. DR-09-3]

HONORABLE DAVID M. CLARK, JUDGE

DISMISSED

LARRY D. VAUGHT, Chief Judge

In this one-brief case, appellant Dana Carek appeals from the October 28, 2010 decree of divorce from her husband, appellee Charles Carek. However, we are unable to reach the merits of her appeal because the record does not contain a final, appealable order.

When the parties married, appellee owned a residence and two acres in Little Rock. During the marriage, Charles executed a quitclaim deed, which Dana claims converted the property to marital property. The testimony was disputed concerning the amount owed on the property, and the trial court resolved the issue by allowing Charles to choose one of two alternatives for final resolution.

Specifically, the trial court ordered "[a]s to the marital residence, if [Charles] desires to retain the house, he can assume the entire debt on the house, or the house can be sold, and the parties will split the debt 50/50." The decree also divided other debts, awarded custody and visitation, and set child support. On November 5, 2010, Dana filed a motion for new trial,

claiming that the trial court erred in its disposition of the marital residence by ordering an unequal division of the marital home without stating the statutorily required basis for the decision. However, the trial court allegedly refused to proceed with the hearing because of a request for bankruptcy relief under Chapter 13.[1]

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure–Civil provides that an appeal may be taken from a final judgment or decree entered by the trial court. When the order appealed from is not final, this court will not decide the merits of the appeal. *Wadley v. Wadley*, 2010 Ark. App. 208, at 10. Whether a final judgment, decree, or order exists is a jurisdictional issue that we have the duty to raise, even if the parties do not, in order to avoid piecemeal litigation. *Id.* For a judgment to be final, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Id.* Thus, the order must put the trial court's directive into execution, ending the litigation, or a separable branch of it. *Id.* An order is not final when it adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties. *Farrell v. Farrell*, 359 Ark. 1, 193 S.W.3d 734 (2004). Moreover, where the order appealed from reflects that further proceedings are pending, which do not involve merely collateral matters, the order is not final. *Roberts v. Roberts*, 70 Ark. App. 94, 14 S.W.3d 529 (2000).

The final disposition of the marital residence was conditional, and the record does not

[1]There are no pleadings to support this assertion, which comes from Dana's statement of the case. Additionally, the "New Trial" hearing has not been abstracted.

show which of the two paths Charles selected or the resulting consequences of his choice. As a general rule, a conditional judgment, order, or decree, the finality of which depends on certain contingencies that may or may not occur, is not a final order for purposes of appeal. *Wadley*, 2010 Ark. App. 208, at 10. Because the record does not show which choice Charles selected or the results of his choice, the divorce decree is not a final, appealable order. Therefore, we dismiss the appeal.

Appeal dismissed.

PITTMAN and GRUBER, JJ., agree.