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ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-21-596

	Opinion Delivered February 22, 2023
ANGELITA MCFADDEN-GREGORY APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SIXTH DIVISION [NO. 60CV-21-2609]
V.	HONORABLE TIMOTHY DAVIS FOX, JUDGE
LIZZIE JOHNSON APPELLEE	DISMISSED IN PART; AFFIRMED IN PART

WENDY SCHOLTENS WOOD, Judge

Angelita McFadden-Gregory appeals the Pulaski County Circuit Court's order quieting title to jointly owned property in her, Lizzie Johnson, and their cotenants and ordering that the property be sold. Angelita argues that the circuit court erred by failing to enforce the requirements of the Arkansas Uniform Partition of Heirs Property Act.[1] We dismiss in part and affirm in part.

The property at issue is an undeveloped residential seven-acre tract of real property located in Pulaski County purchased by Lizzie's father, Bill McFadden, in 1945. Bill died intestate in 1959, and his estate was not probated. When he died, he was married to Ida McFadden, who inherited a one-third life estate in the property. Bill and Ida had five

[1]Ark. Code Ann. §§ 18-60-1001 et seq. (Repl. 2015).

children—Andrew McFadden, Sr.; Cecil McFadden; Amos McFadden; Jeanette McFadden; and Lizzie—who each inherited a one-fifth undivided interest in the property upon Bill's death. The parties do not dispute that, through various deaths and conveyances, the property is now owned by the parties as tenants in common in the following shares: Lizzie (35 percent); Diana Nicholson (35 percent); Andrew McFadden, Jr., the son of Andrew McFadden, Sr. (15 percent); and Angelita, the daughter of Amos McFadden (15 percent).

On April 27, 2021, Lizzie filed a petition to quiet title and order partition or sale of the property, naming Diana, Andrew, and Angelita as defendants. She detailed the chain of title, attached the relevant deeds, and asked the circuit court to quiet title to the seven acres in the parties. She alleged that she and Diana had paid the taxes and "kept up the property" and that no other party had asserted an interest in the property. Lizzie claimed that the cotenants were in conflict over the appropriate division of the property, that partitioning the property would cause some of the property to be landlocked, and that dividing the property into portions would diminish the value of the property. She contended, therefore, that the property should be sold and the proceeds divided according to the parties' respective interests. She also alleged that the owner of the adjacent lot had made an offer to purchase the property.

Diana and Andrew did not file a response to Lizzie's petition. Angelita filed a pro se response in which she generally admitted, denied, or claimed to be without knowledge of the various allegations. She asked the court to dismiss the petition.

The circuit court held a hearing on July 26, 2021, at which Lizzie, Lizzie's counsel, and Angelita, representing herself, appeared. There was no formal testimony or argument presented, but the court, counsel, and Angelita discussed the issues. Counsel informed the court that he had spoken with Andrew and Diana and that both were in favor of the petition as filed. Angelita told the court that she wanted to keep her 15 percent interest—which amounted to just over an acre if divided. The court entered a survey of the property into evidence, and the parties discussed the possible solutions. Although there is a twenty-five-foot easement that allows access to the whole seven acres, it was not apparent to the circuit court that a 1.05-acre parcel could be partitioned to Angelita without landlocking either her portion or the remaining acreage. The court told the parties that it was forbidden to "judicially landlock" property.

At the conclusion of the hearing, the court specifically addressed Angelita and reminded her that she owned an undivided 15 percent interest in the property as a whole and not a specifically divided acre. The court told her that if the parties did not have an agreement within two weeks regarding an acceptable, alternative solution, it would order the property sold, and she would get 15 percent of the net proceeds. Counsel then informed the court that there was a written offer to purchase the property for $35,000 by an adjacent landowner. Angelita interjected, stating that she had not been given the option to purchase the property and that she would be interested in paying more than $35,000 if she could get a loan. The court then concluded the hearing, reminding the parties that they had two weeks to "work out a deal" or it would order the property sold for the $35,000 purchase price.

The circuit court entered an order on July 28 setting forth the relevant shares of ownership, indicating that all the owners except Angelita wanted to sell the property, stating that partitioning the property would cause three-of-the-four owners' portions to be landlocked, and providing that the parties had until August 9 to reach a settlement agreement, in writing and approved by the court, for the division or sale of the property. If an agreement was not reached by August 9, the court stated that it would issue an order quieting title in the parties and ordering the property sold for $35,000 with the proceeds to be divided among the parties on the basis of their percentage of ownership.

On August 6, Angelita filed a document with the court alleging that she had sent Diana, Lizzie, and Andrew an offer to purchase their respective interests in the property for a total of $30,000. She alleged that Andrew agreed, Diana did not respond, and Lizzie rejected the offer. She asked the court to set a hearing date on the matter.

On August 19, the circuit court entered an order quieting title to the property in Lizzie (35 percent), Diana (35 percent), Andrew (15 percent), and Angelita (15 percent). The court found that the property could not be partitioned without causing it to be landlocked and diminishing the value of the property. The court also found that the majority of the owners wanted to sell the property to the adjacent landowner, and it ordered the property to be sold to him for $35,000 with the proceeds from the sale to be divided according to the parties' percentage of ownership.

On August 26, Angelita filed a letter with the circuit court stating that she was not given due process and that she had discovered Arkansas had enacted the Uniform Partition

of Heirs Property Act (the "Heirs Act"). She asked the court to reconsider its order and to allow her to purchase the "heir property." The court denied her request in an order entered on September 3, stating that it would "take no further action on this matter" and that the August 19 order "is a final appealable order." Angelita filed a notice of appeal on September 15 from the "order entered on August 19, 2021, including all rulings of the trial court and interlocutory orders merged into the judgment."

On appeal, Angelita argues that the circuit court erred by failing to enforce the requirements of the Heirs Act. Specifically, she contends that when a partition action is brought on property that is "heirs property," the Heirs Act requires the circuit court to determine the fair market value of the property, offer the nonpetitioning cotenants the right to purchase the property at that price, and follow specific notification procedures and timelines. She asks us to reverse and remand for the court to adhere strictly to the requirements of the Heirs Act.

As an initial matter, we turn to the question of our jurisdiction. The filing of a notice of appeal is jurisdictional, although the supreme court requires only substantial compliance with the procedural steps set forth in Rule 3(e) of the Arkansas Rules of Appellate Procedure–Civil. *Williams v. St. Vincent Infirmary Med. Ctr.*, 2021 Ark. 14, at 6, 615 S.W.3d 721, 725. The relevant part of Rule 3(e) provides that "[a] notice of appeal or cross-appeal shall: . . . (ii) designate the judgment, decree, order or part thereof appealed from[.]" Ark. R. App. P.–Civ. 3(e)(ii) (2022). It must be judged by what it recites and not what it was intended to recite, and it must state the order appealed from with specificity, as orders not

mentioned in it are not properly before the court. *Colonel Glenn Health & Rehab, LLC v. Aldrich*, 2020 Ark. App. 222, at 4, 599 S.W.3d 344, 347.

Angelita's notice of appeal names only the August 19 order. Angelita did not bring up the issue of the Heirs Act until her letter of August 26 asking the court to reconsider its order, which the court denied in an order entered on September 3. While a defect is not necessarily fatal to the notice when it is clear what order the appellant is appealing, *see, e.g.*, *Williams*, 2021 Ark. 14, at 6, 615 S.W.3d at 725, that is not the situation here. The notice of appeal is clear what order Angelita is appealing—that is, the order entered on August 19. The September 3 order is neither specifically designated nor impliedly referenced as one of the orders appealed from. Thus, to the extent that Angelita seeks to appeal the September 3 order, the notice of appeal was fatally deficient, we have no jurisdiction to entertain an appeal from that order, and we must dismiss this part of her appeal.

Although we recognize that Angelita has filed a timely notice of appeal from the order entered on August 19, her argument on appeal—that the circuit court erred by failing to enforce the requirements of the Heirs Act—was not raised, developed, or ruled on by the circuit court. It is elementary that we will not consider arguments that are not preserved for review. *ProAssurance Indem. Co. v. Metheny*, 2012 Ark. 461, at 18, 425 S.W.3d 689, 699. In order to preserve an issue for appeal, the appellant must specifically raise the argument relied on to the circuit court, develop the argument there, and obtain a ruling on the argument. *Evans v. Carpenter*, 2022 Ark. App. 83, at 7, 642 S.W.3d 235, 240. The failure to obtain a ruling on an argument precludes appellate review because there is no lower court order on

the issue for this court to review on appeal. *Brown v. Ark. Dep't of Hum. Servs.*, 2017 Ark. App. 67, at 6, 511 S.W.3d 895, 899.

Angelita did not raise the Heirs Act at the hearing, and the following statements by Angelita at the hearing explaining why she wanted to keep the property were not sufficient to apprise the circuit court of her argument pursuant to the Heirs Act: "because it's heir property. I want something to pass on—that's the only thing I have from my dad. I want to pass it to my girls." Moreover, the circuit court's August 19 order does not mention the Heirs Act or anything about the property being "heir property." It is an appellant's responsibility to obtain a ruling to preserve an issue for appeal. *Evans*, 2022 Ark. App. 83, at 7, 642 S.W.3d at 240. Accordingly, to the extent Angelita is arguing the Heirs Act requires reversal of the August 19 order, we hold the argument is not preserved for appeal, and we affirm that order.

Dismissed in part; affirmed in part.

THYER and BROWN, JJ., agree.

Furonda Brasfield, for appellant.

Harvey Harris, for appellee.