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Cite as 2010 Ark. App. 854

# ARKANSAS COURT OF APPEALS

DIVISION II
**No.** CA10-361

WILLIAM BERRY and BRENDA BERRY
APPELLANT

V.

LARRY G. WILSON
APPELLEE

**Opinion Delivered** DECEMBER 15, 2010

APPEAL FROM THE COLUMBIA COUNTY CIRCUIT COURT
[CV-08-2-4]

HONORABLE DAVID FREDRIC GUTHRIE, JUDGE

DISMISSED

**RITA W. GRUBER, Judge**

Brenda and William Berry appeal from an order of the Columbia County Circuit Court rejecting their counterclaim for specific performance against Larry Wilson, finding that there was no contract between the parties. On appeal, the Berrys contend that the trial court erred in denying their motion to deem requests for admission admitted; in failing to impose upon Mr. Wilson a presumption that the missing contract in his possession would be contrary to his assertions at trial; in granting relief to Mr. Wilson because he failed to include an indispensable party; and in ruling that there was no contract. Because the Berrys have not appealed from a final, appealable order, we dismiss the appeal.

In January 1997, Mr. Wilson bought a manufactured home by making a small down payment and financing the balance of the purchase price over twenty years with Bank of America. The contract and security agreement, setting forth the financing arrangement

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between the parties, provided that upon timely payment, title would be conveyed to Mr. Wilson. The Berrys and Mr. Wilson testified that, later that year, they had entered into an agreement under which the Berrys would purchase the home from Mr. Wilson by making monthly payments to Wilson. Although the agreement was reduced to writing, the written document is no longer available.

The Berrys took possession of the home and began making payments. After ten years of making payments, Mr. Berry considered the contract completed, made no further payments, and demanded that Mr. Wilson deliver an unencumbered title to the home. Mr. Wilson refused, claiming that their agreement required the Berrys to make monthly payments until the security agreement with Bank of America was paid in full—almost twenty years, not ten years.

Mr. Wilson then filed a complaint in unlawful detainer and for collection of unpaid taxes and insurance on the home. The Berrys filed a counterclaim for specific performance to force Mr. Wilson to convey title of the home to them. The Berrys also contended that Mr. Wilson's "improper" lawsuit against them caused them emotional distress for which they requested compensation.

After a hearing, the trial court entered an order finding that there was no contract between the parties because they did not have an agreement on the material term of duration, and thus on the purchase price. Therefore, the court found that title to the home remained with Mr. Wilson and it denied the Berrys' claim for specific performance. The

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court then determined that the Berrys had "an equitable lien or interest in the property," but stated that the lien "could not be resolved in this action because of the absence of a necessary party—the finance company." The court then ordered the following:

> Berry shall file a separate action against Wilson and the finance company to establish the respective interests of the involved parties. In the interim, Berry may retain possession of the property, provided that he makes payment to Wilson of the regular payments set out in Wilson's agreement with Bank of America and now assigned to Green Tree Acceptance Corporation. The delinquency alleged by Wilson does not have to be paid at this time and is reserved as an issue for subsequent determination. If Berry chooses not to make said payments, Wilson shall be entitled to possession. Berry shall advise Wilson of his decision within 30 days.

Finally, the court said that all issues not addressed would be reserved for the subsequent lawsuit, which it would hear "either by random assignment by the Clerk or by transfer upon motion of Wilson."

Because finality presents a jurisdictional issue, it is a matter we must consider even though the parties do not raise it. *See Haile v. Ark. Power & Light Co.*, 322 Ark. 29, 907 S.W.2d 122 (1995). With exceptions not applicable here, an appeal may be taken only from a final judgment or decree entered by the trial court. Ark. R. App. P.–Civ. 2(a)(1) (2010). An order is not final when it adjudicates fewer than all of the claims or the rights and liabilities of fewer than all of the parties. *Farrell v. Farrell*, 359 Ark. 1, 5, 193 S.W.3d 734, 736 (2004). For an order to be final and appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. *Bayird v. Floyd*, 2009 Ark. 455, ___ S.W.3d ___. As a general rule, a conditional judgment, order, or decree, the finality of which depends on certain contingencies that may or may not

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occur, is not a final order for purposes of appeal. *See Mid-State Homes, Inc. v. Beverly*, 20 Ark. App. 213, 215, 727 S.W.2d 142, 143 (1987). Finally, 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, 95–96, 14 S.W.3d 529, 531 (2000).

The order in this case specifically fails to resolve the issue of the Berrys' equitable lien, orders the Berrys to bring another action, and reserves issues to address in a yet-to-be-filed lawsuit. Because the order from which this appeal arises is not a final order, this court has no jurisdiction to hear the appeal. Accordingly, we dismiss the appeal without prejudice.

ROBBINS and BROWN, JJ., agree.