ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION I

CA08-43

December 17, 2008

WILLIAM CANADY and LAVON CANADY APPELLANTS V. RICKY GARRETT, DAVID GOBER, JR., and ST. MARK'S BAPTIST CHURCH APPELLEES	APPEAL FROM THE CONWAY COUNTY CIRCUIT COURT [CV-2004-78] HONORABLE TERRY M. SULLIVAN, JUDGE DISMISSED

This case is the second volley in an ongoing lawsuit disputing whether there are trespasses on the church's property by appellants, William and Lavon Canady, who own land to the south of the church's property. Lavon Canady's deceased grandmother, Ora Oliver, owned land to the east of the church's property; it is that land that is the subject of the litigation, past and present. Ms. Oliver died in 1960, but the land is apparently still in her name.

The case originally began in 2004, when appellees, Ricky Garrett and David Gober, Jr., as trustees for St. Mark's Baptist Church, filed a complaint for permanent injunction against appellants, requesting that the trial court order the Canadys to cease and desist any type

of trespass or construction of any sort of structures upon the church's property, identified as having been received by deed dated March 8, 1929, and described as follows:

> Two (2) Acres, more or less, in the Northwest Corner of the Southeast Quarter of the North-east Quarter of Section Twenty-four (24) in Township Six (6) North, Range Fifteen (15) West, described as commencing at the Northwest corner thereof and running thence East 70 yards, thence South 140 yards; thence West 70 yards; thence North 140 yards to place of beginning.

The judgment, filed of record on May 2, 2005, reflected that William and Lavon Canady were permanently enjoined from placing any structures on the church's property, and they were ordered to remove two posts forthwith.

On May 24, 2006, the church filed a motion for contempt against the Canadys, stating that the Canadys had caused a "garden spot" to be plowed that encroached upon the church's real property, which the church again described with the above description and deed reference. The church alleged that the garden spot was in violation of the trial court's previous judgment that permanently enjoined the Canadys from placing any structures on the church's property; that the Canadys should be held in contempt for their violation of the permanent injunction; and that the survey previously prepared and entered into evidence in the 2004 action, which mirrored the real-property description in the 1929 deed, accurately depicted the true property line of the church's property and should be declared to be the true boundary of the real property.

In their answer, the Canadys admitted that no persons other than themselves had been claiming the disputed property against the church, but they denied that the property in question was owned by the church. They then amended their answer, stating that the

property to the east of the church property is owned by the heirs of Ora Oliver, who were not parties to the case; that they had raised a garden on the Oliver property well in excess of seven years; that the Oliver family had exercised ownership of the property adversely and openly; and that the Oliver heirs should prevail had they been joined in the action.

The trial court entered judgment, filed of record on October 19, 2007, finding that the church was the legal owner of the real property described in its motion for contempt, the church having received the property by conveyance dated March 8, 1929, and that the survey prepared by James Ross showed the proper boundary of the real property described in the deed and that the survey should be filed of record. The trial court further found that the Canadys owned the garden spot, which encroached over the eastern boundary line of the church's real property, by virtue of adverse possession;[1] that the Canadys were to have the garden spot surveyed at their expense; and that when that legal description was obtained, the order would be amended to include the proper description of the church's property, less and except the garden spot. The Canadys appeal, arguing that the trial court lacked subject-matter jurisdiction to enter an order establishing the boundary lines to the property when the record owners of one of the tracts was not a party to the action. Because the judgment appealed from is not a final and appealable order, we hold that this appeal must be dismissed.

In the judgment, the trial court ordered the Canadys to have the garden spot surveyed and that when that legal description was obtained, the order would be amended to include

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[1]The church does not cross-appeal the finding of adverse possession in favor of the Canadys.

the proper description of the church's property less and except the garden spot. Rule 2(a)(1) and (2) of the Rules of Appellate Procedure – Civil provides that an appeal may be taken from a final judgment or an order "which in effect determines the action and prevents a judgment from which an appeal might be taken, or discontinues the action." This portion of Rule 2 has been interpreted to mean that an order must dismiss the parties from court, discharge them from the action, or conclude their rights to the subject matter in controversy in order for the order to be appealable. *Petrus v. The Nature Conservancy*, 330 Ark. 722, 957 S.W.2d 688 (1997); *Penland v. Johnston*, 97 Ark. App. 11, 242 S.W.2d 635 (2006). The order must be of such a nature so as to not only decide the rights of the parties, but to also put the court's directive into execution, ending the litigation or a separable part of it. *Id.* The trial court's order must describe the boundary line between disputing land owners with sufficient specificity that it may be identified solely by reference to the order. *Id.* Because the judgment contemplates another survey, and because the garden spot cannot be identified solely by looking at this judgment, there is not a final appealable order, as in *Petrus* and *Penland*, *supra*. For this reason, we dismiss this appeal.

Appeal dismissed.

PITTMAN, C.J., and GLADWIN, J., agree.