

SUPREME COURT OF ARKANSAS

No. 12-358

DERAL PLUNK

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 27, 2012

PRO SE MOTION TO PROCEED IN
FORMA PAUPERIS [PRO SE APPEAL
FROM THE POPE COUNTY
CIRCUIT COURT, CV 11-451, HON.
WILLIAM M. PEARSON, JUDGE]

MOTION TO PROCEED IN FORMA
PAUPERIS DENIED.

PER CURIAM

Pursuant to a negotiated plea agreement, appellant Deral Plunk pled guilty in 1997 in the Pope County Circuit Court to fraudulent use of a credit card and possession of a controlled substance with intent to deliver. He was sentenced to 120 months' incarceration in the Arkansas Department of Correction ("ADC"), with 42 months additional suspended imposition of sentence. In 2011, appellant was convicted in the Pike County Circuit Court of possession of drug paraphernalia and two counts of possession of a controlled substance with intent to deliver, for which he was sentenced to 120, 216, and 216 months' incarceration in the ADC, respectively. He has been in the ADC's custody since July 28, 2011.

On November 17, 2011, the State of Arkansas filed in the Pope County Circuit Court a petition pursuant to the State Prison Inmate Care and Custody Reimbursement Act ("Inmate Reimbursement Act"), codified at Arkansas Code Annotated sections 12-29-501 to -507 (Repl. 2009), seeking reimbursement of the costs of appellant's incarceration. Funds

in the amount of \$7,007.47 were taken from appellant's inmate account¹ and placed in the circuit court's registry pending the outcome of the action. Appellant filed a response and motion to dismiss, and the State replied to the motion to dismiss and filed a motion to transfer the action to the Pike County Circuit Court.² On January 17, 2012, the circuit court entered a written order denying appellant's motion to dismiss and granting the State's motion to transfer the action. Appellant timely filed a notice of appeal from that order.

On April 19, 2012, appellant tendered to this court a petition for writ of certiorari, asking this court to bring up the record on appeal, and a petition for writ of mandamus, requesting that this court require the circuit court to rule on an outstanding motion to proceed in forma pauperis that appellant contends was filed in the circuit court. Appellant was informed by one of our staff attorneys that he needed to submit a motion to proceed in forma pauperis in this court before we would consider his petitions. Now before us is appellant's motion to proceed in forma pauperis, seeking to file the petitions for writ of certiorari and writ of mandamus.

Because the order from which appellant seeks to appeal is not a final, appealable order, it is clear that appellant could not prevail in an appeal, and we deny the request to proceed in forma pauperis.

Rule 2 of the Arkansas Rules of Appellate Procedure—Civil (2011) lists the orders from

¹All inmates in the Arkansas Department of Correction have accounts in the inmate's name, maintained by the ADC, into which money may be deposited in the inmate's behalf.

²Under the Inmate Reimbursement Act, an action for reimbursement must be brought in the circuit court from which the inmate was sentenced. *See* Ark. Code Ann. § 12-29-501(a)(1).

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which an appeal may be taken. Generally, for an order to be appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy. See *Petrus v. Nature Conservancy*, 330 Ark. 722, 957 S.W.2d 688 (1997). Even though an issue on which a court renders a decision might be an important one, an appeal will be premature if the decision does not, from a practical standpoint, conclude the merits of the case. See *Doe v. Union Pac. R.R.*, 323 Ark. 237, 914 S.W.2d 312 (1996). An appeal from any final order also brings up for review any intermediate orders involving the merits and necessarily affecting the judgment. Ark. R. App. P.–Civ. 2(b).

Where, as here, a circuit court denies a defendant's motion to dismiss, we have held that the denial is not a final judgment from which an appeal may be taken, as the only matter disposed of by the order is that the case should proceed to trial, and those matters put in issue are not lost by continuing through a trial of the matter. See *Cigna Ins. Co. v. Brisson*, 294 Ark. 504, 744 S.W.2d 716 (1988). Similarly, we have held that an order fixing venue is not a final order, because the question of venue, once put in issue, is not lost by continuing through a trial of the matter. See *Blunt v. Cartwright*, 342 Ark. 662, 30 S.W.3d 737 (2000); see also *Arkansas Savings & Loan v. Corning Savings & Loan*, 252 Ark. 264, 478 S.W.2d 431 (1972) (holding that an order granting or denying a change of venue is not an appealable order). This court will not reach the merits of an appeal if the order being appealed is not final. See *Corning Bank v. Delta Rice Mills, Inc.*, 281 Ark. 342, 663 S.W.2d 737 (1984).

As there was no final, appealable order entered in this case, it is clear that petitioner could not prevail if the matter were allowed to proceed, and we deny his request to proceed

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as a pauper.

Motion to proceed in forma pauperis denied.

Deral Plunk, pro se appellant.

No response.