

ZANDRA MANZANARES

NO. 16-CA-52

VERSUS

FIFTH CIRCUIT

AMADEO MANZANARES

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 750-641, DIVISION "P"
HONORABLE LEE V. FAULKNER, JR., JUDGE PRESIDING

MARCH 30, 2016

COURT OF APPEAL
FIFTH CIRCUIT

FILED MAR 30 2016

ROBERT M. MURPHY
JUDGE


CLERK
Cheryl Quirk Landrieu

Panel composed of Judges Marc E. Johnson,
Robert A. Chaisson, and Robert M. Murphy

LIZETTE A. MILLER-RADOVIC
ATTORNEY AT LAW
650 Poydras Street
Suite 1400
New Orleans, Louisiana 70130
COUNSEL FOR PLAINTIFF/APPELLANT

APPEAL DISMISSED;
CASE REMANDED

RMM
USJ
RAC

Plaintiff-appellant, Zandra Manzanares (“Plaintiff”), appeals a judgment of the trial court partially sustaining and partially denying her objection to the domestic hearing officer’s recommendations and interim order. For the reasons that follow, we find that the judgment on appeal is not a valid, final judgment. Accordingly, we dismiss this appeal without prejudice and remand the matter to the trial court for further proceedings.

PROCEDURAL HISTORY

This matter arises out of a “Petition for Partial Separation of Community Property During Marriage; Petition for Access to Community Property Funds and Income; Petition for Participation in Management of Community Property Businesses,” filed by Plaintiff on June 15, 2015 against defendant-appellee, Amadeo Manzanares (“Defendant”). Plaintiff and Defendant were married on February 12, 1970, but have lived separate and apart since approximately 1990. At the time of her petition, neither Plaintiff nor Defendant had filed a petition for divorce.¹ In her original petition, Plaintiff asserted several claims, including claims for spousal support, partial partition of the community property, an accounting/inventory of community property, and access to her one-half interest in

¹ Since the lodging of the instant appeal, the trial court record for this matter indicates that on February 12, 2016, Plaintiff filed a “Petition for La. C.C. art. 103(1) Divorce and Determination of Incidental Matters.”

the community property due to Defendant's alleged mismanagement of the community property.

On August 5, 2015, the hearing officer issued recommendations and an interim order, denying Plaintiff's requests for relief based upon the hearing officer's determination that Plaintiff was not entitled to such relief where neither Plaintiff nor Defendant had filed a petition for divorce. On August 10, 2015, Plaintiff filed an objection to the hearing officer's recommendations and interim order, which was heard by the trial court on September 9, 2015.

The trial court issued a judgment on September 11, 2015, partially sustaining and partially denying Plaintiff's objection to the hearing officer's recommendations and interim order. Specifically, the trial court remanded Plaintiff's claim for spousal support to the hearing officer, after finding that she is entitled to seek spousal support without filing for divorce; ordered Plaintiff's claim for mismanagement of community property to be heard by the trial court at a later date; and held that the trial court was without authority to consider her claims for an accounting of community property and for a partial partition, where the parties had not filed a petition for divorce.

On November 1, 2015, Plaintiff filed a motion for devolutive appeal of the September 11, 2015 judgment, which the trial court subsequently granted. In Plaintiff's appeal, she solely challenges the aspect of the September 11, 2015 judgment that denied her claim for an accounting of the community property.

LAW AND ANALYSIS

This Court cannot determine the merits of an appeal unless our jurisdiction is properly invoked by a valid final judgment. *Input/Output Marine Sys. v. Wilson Greatbatch Techs., Inc.*, 10-477 (La. App. 5 Cir 10/29/10), 52 So.3d 909, 915. La. C.C.P. art. 1915(B) provides, in pertinent part:

(1) When a court renders a partial judgment. . . as to one or more but less than all of the claims, demands, issues, or theories against a party . . . the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.

(2) In the absence of such a determination and designation, any such order or decision shall not constitute a final judgment for the purpose of an immediate appeal and may be revised at any time prior to the rendition of the judgment adjudicating all the claims and the rights and liabilities of the parties.

Upon review of the record, we find that the judgment appealed is not a valid, final judgment and, therefore, this Court lacks jurisdiction to consider the merits of Plaintiff's appeal. While the September 11, 2015 judgment denied Plaintiff's claims for an accounting of the community property and for a partial partition, it did not dispose of all of the claims asserted in her petition. Specifically, the judgment remanded Plaintiff's claim for spousal support to be heard by the hearing officer, and ordered her claim for mismanagement of community property to be heard by the trial court at a later date.

Since the trial court rendered a partial judgment as to less than all of the claims asserted by Plaintiff, and the judgment has not been designated as a final judgment by the trial court after an express determination that there is no just reason for delay, the September 11, 2015 judgment is not a final judgment under La. C.C.P. art. 1915, and is not appealable as one “. . . in which appeals are given by law” under La. C.C.P. art. 2083. *Claiborne Medical Corp. v. Siddiqui*, 12-759 (La. App. 5 Cir. 2/28/13), 113 So.3d 1109, 1112 (citing *Laviolette v. Dubose*, 07-916 (La. App. 5 Cir. 3/25/08), 983 So.2d 160, 162).

Accordingly, we dismiss this appeal without prejudice and remand the matter to the trial court for further proceedings.

APPEAL DISMISSED; CASE REMANDED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CHERYL Q. LANDRIEU
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK


SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **Uniform Rules - Court of Appeal, Rule 2-20** THIS DAY **MARCH 30, 2016** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:



CHERYL Q. LANDRIEU
CLERK OF COURT

16-CA-52

E-NOTIFIED

NO ATTORNEYS WERE ENOTIFIED

MAILED

W. J. LEBLANC, JR.
ATTORNEY AT LAW
4421 ZENITH STREET
METAIRIE, LA 70001

LIZETTE A. MILLER-RADOVIC
ATTORNEY AT LAW
650 POYDRAS STREET
SUITE 1400
NEW ORLEANS, LA 70130