

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 09-399

CHARLES D. WASHINGTON AND
SHIRLEY WASHINGTON
APPELLANTS

V.

ANDREW WASHINGTON, ET AL.
APPELLEES

Opinion Delivered January 6, 2010

APPEAL FROM THE IZARD
COUNTY CIRCUIT COURT
[NO. CV-07-105-2]

HONORABLE JOHN NORMAN
HARKEY, JUDGE

DISMISSED

COURTNEY HUDSON HENRY, Judge

Appellants Shirley and Charles Washington appeal from a decree of partition entered by the Circuit Court of Izard County. Because the partition decree is not a final, appealable order, we must dismiss the appeal.

On September 18, 2007, appellees Andrew Washington, Alice Dockins, Joe Washington, Georgia Washington, and George Washington Jr., filed a petition against appellants seeking to partition 320 acres of land located in Izard County.¹ Appellees and appellant Charles Washington are siblings, and appellees claimed that all six of them owned the land as tenants in common as the heirs of Annie and George Washington Sr., their parents. In their response and counterclaim for quiet title, appellants asserted that Charles

¹ The petition also included property located in Mount Olive, but this property is not at issue in the appeal.

held record title to the property by virtue of a deed executed by Annie and George Sr. conveying the property to Charles in February 1959. In the alternative, appellants contended that they had acquired the property by adverse possession. Appellants also sought to set aside a deed that Charles executed in April 1959 conveying the property to Annie and George Sr. Further, in the event that the court ruled in favor of partition, appellants sought compensation for improvements they made to the property.

After a hearing, the trial court issued a letter opinion and entered a partition decree incorporating its findings. The court ruled that the parties owned the property as tenants in common and ordered the property to be sold at public auction. The order also provided that the parties were to divide the proceeds of the sale according to their respective interests and that Charles “shall recover his pro rata part of the taxes he has paid over the years and any other provable amounts.”

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil provides that an appeal may be taken only from a final judgment or decree entered by the trial court. The question of whether an order is final and subject to an appeal is a jurisdictional issue that this court will raise on its own. *Moses v. Hanna’s Candle Co.*, 353 Ark. 101, 110 S.W.3d 725 (2003). The supreme court has specifically held that a decree ordering partition either in kind or by a sale and division of the proceeds is not a final order from which an appeal may be taken. *Bell v. Wilson*, 298 Ark. 415, 768 S.W.2d 23 (1989). *See also Rigsby v. Rigsby*, 340 Ark. 544, 11 S.W.3d 551 (2000); *Looney v. Looney*, 336 Ark. 542, 986 S.W.2d 858 (1999);

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Magness v. Commerce Bank of St. Louis, 42 Ark. App. 72, 853 S.W.2d 890 (1993). There is also another reason that the order appealed from fails the test of finality. The trial court has yet to determine how much appellants are owed for taxes and improvements. An order is not final and appealable if the issue of damages remains to be decided. *U.S. Bank, N.A. v. Milburn*, 352 Ark. 144, 100 S.W.3d 674 (2003).

Rule 54(b)(1) of the Arkansas Rules of Civil Procedure allows a trial court, when it finds no just reason for delaying an appeal, to direct the entry of a final judgment as to fewer than all of the claims or parties by executing a certification of final judgment. Absent this required certification, any judgment, order, or other form of decision that adjudicates fewer than all of the claims or the rights and liabilities of fewer than all of the parties shall not terminate the action. Ark. R. Civ. P. 54(b)(2). No such certification was made in this case.

Because appellants have appealed from an order that is not final, the appeal is dismissed without prejudice.

Dismissed.

KINARD and BROWN, JJ., agree.