

FORMAL ORDER

STATE OF ARKANSAS,)
)
)
 SUPREME COURT)

**BE IT REMEMBERED, THAT A SESSION OF THE SUPREME COURT
BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON SEPTEMBER 23, 2021,
AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:**

SUPREME COURT CASE NO. CV-20-316

PETITIONER

BETTY CHARLES

V. APPEAL FROM OUACHITA COUNTY CIRCUIT COURT - 52CV-19-145

JAMES SHELTON ELLIS, TRUSTEE OF THE JAMES SHELTON
ELLIS TRUST CUI 9/2/1998

RESPONDENT

PETITIONER'S PRO SE PETITION FOR REVIEW IS DENIED.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF
THE ORDER OF SAID SUPREME COURT, RENDERED IN
THE CASE HEREIN STATED, I, STACEY PECTOL,
CLERK OF SAID SUPREME COURT, HEREUNTO
SET MY HAND AND AFFIX THE SEAL OF SAID
SUPREME COURT, AT MY OFFICE IN THE CITY OF
LITTLE ROCK, THIS 23RD DAY OF SEPTEMBER, 2021.


Tracy Rector

BY:

DEPUTY CLERK

ORIGINAL TO CLERK

CC: BETTY CHARLES
PAUL E. LINDSEY

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-20-316

BETTY CHARLES

APPELLANT

v.

JAMES SHELTON ELLIS, TRUSTEE OF
THE JAMES SHELTON ELLIS TRUST
CUI 9/2/1998

APPELLEE

Opinion Delivered June 2, 2021

APPEAL FROM THE OUACHITA
COUNTY CIRCUIT COURT
[NO. 52CV-19-145]

HONORABLE DAVID GUTHRIE,
JUDGE

DISMISSED WITHOUT PREJUDICE

RAYMOND R. ABRAMSON, Judge

Betty Charles appeals the Ouachita County Circuit Court order of partition entered January 17, 2020. On appeal, Charles argues that the circuit court's determination of the property division was clearly erroneous and that the circuit court abused its discretion in denying Charles's request for a continuance. We must dismiss the appeal because it is not a final, appealable order.

Dr. James Shelton Ellis, trustee of the James Ellis Trust CUI 9/2/1998, filed a petition against Betty Charles to partition a parcel of land in Ouachita County. Ellis asserted he owned a four-sevenths (4/7) interest in the forty acres after buying the land from Arkansas Pulpwood Company, Inc., and Charles owned a three-sevenths (3/7) interest after acquiring her interest from two separate warranty deeds: one from Lucille Charles and one from Hudis O. Hamilton and Carman Hamilton. After a hearing on the partition petition, in which Charles failed to appear, the circuit court found in favor of Ellis.

"Appendix B"

In its order, the circuit court appointed three commissioners to view the property to determine if it was susceptible to a division in kind proportionally in acreage and value. The court further ordered that if the property could not be divided equitably without diminishing the value, the court would then order a sale of the property. Charles filed a timely notice of appeal that designated the court's partition order, and this appeal followed.

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 circuit court. 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); *Kinkead v. Spillers*, 327 Ark. 552, 940 S.W.2d 437 (1997); *Magness v. Commerce Bank of St. Louis*, 42 Ark. App. 72, 853 S.W.2d 890 (1993). In both *Kinkead* and *Magness*, the appellate courts indicated that the proper order from which to file an appeal in a partition action is the order confirming the sale of the property. Because there has been no sale of the property in the present case, the appeal is premature.

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

Because Charles has appealed from an order that contemplates further action by the parties and the circuit court, there is no final, appealable order before us. Consequently, we must dismiss the appeal without prejudice. *Peterson v. Davis*, 2010 Ark. App. 794.

Dismissed without prejudice.

HIXSON and MURPHY, JJ., agree.

"Appendix B"

STATE OF ARKANSAS
County of Ouachita ss
FILED ON THIS 17 DAY OF JAN 2020
at 11:00 o'clock A M.
Gladys F. Nettles Circuit Clerk
By: Kianna Carter DO
D.C.

IN THE CIRCUIT COURT OF OUACHITA COUNTY, ARKANSAS

CIVIL DIVISION

**JAMES SHELTON ELLIS, TRUSTEE OF THE
JAMES SHELTON ELLIS TRUST CUI 9/2/1998**

PLAINTIFF

VS.

NO. 52CV-19-145

BETTY CHARLES, ET AL

DEFENDANTS

ORDER OF PARTITION

On January 17, 2020, this matter came on for hearing at its scheduled time. Plaintiff appeared in person by James Shelton and his attorney, Paul E. Lindsey. Defendant failed to appear. Based upon the testimony and evidence presented, the Court finds and orders as follows:

1.

Plaintiff filed this action requesting partition of the following described Ouachita County, Arkansas property:

SW1/4 SE1/4 of Section 30, Township 14 South, Range 18 West, Ouachita County, Arkansas.

2.

Defendant Betty Charles filed a pro se response to the petition and a counterclaim. She requested on more than one occasion for additional time to retain the services of an Arkansas attorney to represent her herein. Her requests for additional time were granted except for her most recent request for continuance under a letter dated January 3, 2020. With a trial date

having been scheduled since November 14, 2019, Defendant's motion for an additional continuance was denied.

3.

The property was last owned in unity of title by Luches Hamilton, Sr. and his wife, Golden Hamilton. They are deceased and had 8 children, one of which died without having children and his 1/8th interest passed to his siblings upon his widow's death.

4.

Plaintiff is found to be the owner of an undivided 4/7th interest in the property and the Defendant is found to be the owner of a 3/7th interest in the property.

5.

Plaintiff acquired its undivided interest from Arkansas Pulpwood Company, Inc. (Book D290@37), which acquired its interest from Luches Hamilton, Jr. (Book D270@301), Jerry Hamilton (Book D272@354), Dwight and Felisha Parramore (Book D271@444), and Larry and LaDawn Hamilton (Book D271@441). The grantors in the deeds to Arkansas Pulpwood Company, Inc. were heirs of Luches Hamilton, Sr. and Golden Hamilton.

6.

Defendant Betty Charles acquired her 3/7th interest in the property from Lucille Charles (Book D219@265) and from Hudis and Carman Hamilton (Book D203@69). The grantors in those deeds were heirs of Luches Hamilton, Sr. and Golden Hamilton.

7.

Plaintiff has requested that the property be partitioned. Defendant filed an answer and counterclaim objecting to the partition but her arguments do not present a legal basis to deny the request for partition.

8.

A partition of the property is hereby ordered. Under the law the Court is first to determine if a partition in-kind is possible. To make that determination the Court is appointing three (3)

persons as commissioners to view the property to determine if it is susceptible to a division in-kind proportionally in acreage and value. The Court hereby appoints Bill Jordan, Dan Daniel and Lawson Kelley as commissioners and instructs them to view the property and determine if the property can be fairly divided in-kind with 4/7ths of the property to go to Plaintiff and 3/7ths to go to Defendant. In making their recommendations and findings, the commissioners can consider any adjoining property interests owned by either of the parties. The commissioners shall make a written report to the Court of their findings and their recommendations as to the partition of the property. If they find the property cannot be divided equitably divided without diminishing the value thereof, then the Court will order a sale of the property.

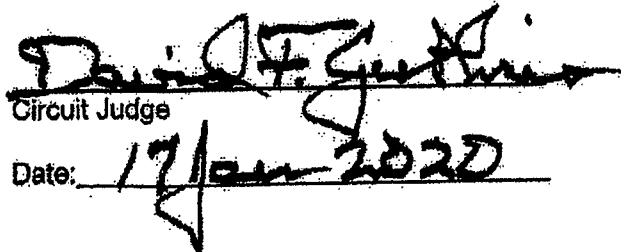
9.

In accordance with A.C.A. §18-60-418 and 419, the costs incurred in the division of the lands, such as surveys, the commissioner's fees and a reasonable attorney's fee to the party bringing this action is to be a cost to be borne by the parties in proportion to their ownership interest in the property. The costs shall also be a lien upon the lands of the party liable therefore until paid.

10.

Upon the conclusion of this matter, Plaintiff's attorney shall submit his fee request by motion for approval by the Court. If the approved fees and costs are not timely by a party then upon request, the Court shall order that the property sold to satisfy the lien.

IT IS SO ORDERED AND DECREED.


Circuit Judge
Date: 17 Jan 2020