

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001110-MR

BEULAH MILLS

APPELLANT

v.

APPEAL FROM MEADE CIRCUIT COURT
HONORABLE SAM H. MONARCH, JUDGE
ACTION NO. 03-CI-00160

JAMES H. MILLS

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * **

BEFORE: DIXON AND KELLER, JUDGES; GRAVES,¹ SENIOR JUDGE.

KELLER, JUDGE: Beulah Mills (Beulah) filed an appeal from the Meade Circuit Court's February 23, 2006, Order regarding various exceptions taken by the parties to the findings of the Domestic Relations Commissioner (the DRC) and from the circuit court's April 27, 2006, order denying Beulah's motion to vacate, alter, or amend that order. For the reasons set forth below, we must dismiss this appeal.

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On May 9, 2003, James Mills (James) filed for a divorce from Beulah. The circuit court entered a decree of dissolution on July 30, 2003, reserving all other issues. On January 31, 2005, the DRC held a hearing regarding the determination of what constituted marital and non-marital property, the division of that property, and maintenance. On February 18, 2005, the DRC filed his report and the parties timely filed exceptions to that report. In pertinent part, Beulah contested the DRC's finding that two parcels of farm land (the farm) were non-marital and that any increase in the value of the farm was due simply to market factors and therefore also non-marital. James requested that the court or the DRC make a finding that the farm animals and equipment were either marital or non-marital.

On February 23, 2006, the circuit court issued an order regarding the exceptions filed by the parties. In pertinent part, the court found that the farm was non-marital and that any increase in value to the farm was due to market forces. Therefore, the court found that only the amount of debt reduction was marital property and that Beulah and James were entitled to equal shares of that marital property. Furthermore, the court agreed with James that the DRC had not made any findings regarding the status of the farm animals and equipment as marital or non-marital property and referred the matter back to the DRC to make such findings. At the end of its order, the court stated that it was "final and appealable." On March 27, 2006, the court entered an order modifying the February 23, 2006, order "to the extent that it is interlocutory in nature and not a final and appealable order."

On March 6, 2006, Beulah filed a motion to vacate, alter, or amend the February 23, 2006, order. In her motion, Beulah reiterated her arguments that the increased value of the farm should be considered marital property subject to equitable division. On April 27, 2006, the circuit court entered an order denying Beulah's motion to vacate, alter, or amend and again noted that the order was "final and appealable." However, the court did not note or make any findings that there was no just cause for delay. On May 25, 2006, Beulah filed a notice of appeal. We have reviewed the record and can find no report from the DRC on the issue of whether the farm animals and equipment are marital or non-marital property. Furthermore, we can find no decision from the circuit court on that issue. Therefore, it appears that the orders from which Beulah appeals are not final and appealable.

Based on the preceding, this Court ordered Beulah to show cause why this appeal should not be dismissed as not final and appealable. Beulah has not responded to that order. Therefore, we hold that the order from which the appeal was taken is not final and appealable and that this appeal was prematurely filed. Accordingly, it is hereby ORDERED that this appeal is DISMISSED.

ALL CONCUR.

ENTERED: October 5, 2007

/s/ Michelle M. Keller
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Briana Geissler Abbott
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BRIEF FOR APPELLEE:

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