

The Arkansas Supreme Court Clarifies the Final-Order Doctrine in Divorce Cases

By Martha Tucker Ayres

Finality First. These words should echo in your mind soon after your client in a divorce case receives an adverse property-division decision in circuit court and wants to appeal the division. The “finality first” phrase will remind you to ensure that you have a final, appealable order from the circuit court before you undertake the time and expense associated with an appeal. The main purpose for this practice tip is to alert the bench and bar that the Arkansas Supreme Court has clarified when a circuit court has issued a final order in divorce cases. The court has recently done so in the *Davis, Kelly*, and *Moore* decisions.¹

A final-order issue has typically arisen when a circuit court gives the divorcing parties a set number of days to agree on a division of property, and if one cannot be reached, then the property is directed to be sold and the proceeds divided.² The court of appeals had routinely held that this sort of directive in a divorce decree lacked the certainty needed to appeal it because it left “matters undecided between the parties and tasks yet to be performed.”³ This was true even when the division of property was not an issue on appeal.⁴ The result was a dismissal of the appeal without prejudice. The rub, of course, is that circuit courts and parties intend for these orders (usually divorce decrees) to be final.

While the need for a final order is still one of the pillars supporting appellate jurisdiction, the supreme court turned to a fresh approach when considering the finality of a divorce decree in *Davis v. Davis*.⁵ The certified question answered in *Davis* was whether a divorce decree is final and therefore appealable when it contains language permitting the parties to agree on a division of marital property prior to a sale, or language permitting the parties to agree on the details of a sale.⁶ The supreme court said yes. In the court’s words, allowing parties “a period to work out their differences” does not automatically destroy the finality of an order.⁷

It is enough, for finality purposes, that the divorce decree provide a definitive, judicially enforceable resolution if the parties cannot reach an agreement within a prescribed time.⁸ Keep in mind that the usual 30-day deadline to appeal starts once a final order has been entered.⁹

Here are four examples from recent cases where the supreme court found there was a final and appealable order. These examples show how a divorce decree can be a final order for purposes of appeal while still giving the parties flexibility in taking the practical steps needed to divide property under real-world conditions.

Example 1:¹⁰

- All marital property is to be sold at public auction within 90 days after the entry of the divorce decree.

- The proceeds are to be applied to debt and remainder to be divided equally between the parties.

- The court “shall honor any agreement as to personal property.”

- Any personal property upon which parties cannot agree will be sold by the court clerk and the proceeds divided.

Example 2:¹¹

- The parties’ home is to be listed for a period of six months and in the event a contract for sale is not entered within the six months, either party may petition the Court to have the residence sold via commissioner’s sale.

Example 3:¹²

- The parties’ home is listed for sale until a certain date. If the home sells during this listing period, the parties each receive one-half of any net proceeds.

- If the home does not sell by a certain date, then the home will be sold “by auction on the courthouse steps” and the net proceeds divided equally.

Example 4:¹³

- The marital home will be sold “upon such terms and conditions as to which the parties may agree.”

- If parties cannot agree within 180 days, then either party “is free to petition to the court to have the same sold by the clerk of this court.”

To sum it up, the basic rules about finality still apply to divorce decrees—meaning, primarily, that the order must conclude the parties’ rights and carry out the court’s directive. But since *Davis, Kelly*, and *Moore*, circuit-court orders that were once deemed non-final for appellate purposes may now be addressed on their merits, sooner rather than later.

Endnotes:

1. *Davis v. Davis*, 2016 Ark. 64, *Kelly v. Kelly*, 2016 Ark. 72, and *Moore v. Moore*, 2016 Ark. 105.
2. *See Sherman v. Boeckmann*, 2015 Ark. App. 566.
3. *Sanders v. Passmore*, 2014 Ark. App. 237, at 2.
4. *E.g., Graves v. Graves*, 2014 Ark. App. 331.
5. *Davis v. Davis*, 2016 Ark. 64.
6. *Davis v. Davis*, 2016 Ark. 64, at 3.
7. *Id.* at 8.
8. *Id.* at 9.
9. *See* ARK. R. APP. P.—CIVIL 4(a) (2015).
10. *Id.* at 6.
11. *Kelly v. Kelly*, 2011 Ark. 259, at 5, 381 S.W.3d 817, 822.
12. *Kelly v. Kelly*, 2016 Ark. 72, at 2.
13. *Moore v. Moore*, 2016 Ark. 105, at 3.
14. *E.g., Sherman v. Boeckmann*, 2016 Ark. 203. ■



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