

Third District Court of Appeal

State of Florida

Opinion filed November 12, 2014.
Not final until disposition of timely filed motion for rehearing.

No. 3D14-860
Lower Tribunal No. 12-26858

Maria C. Amaya,
Appellant,

vs.

Jose M. Vazquez,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Marc Schumacher, Judge.

Maria del Carmen Calzon, for appellant.

Jose M. Vazquez, in proper person.

Before WELLS, EMAS and LOGUE, JJ.

PER CURIAM.

Appellant, Maria C. Amaya, appeals an order which (1) granted partial final summary judgment on a count for partition of real property in favor of Jose M. Vazquez and ordered a partition sale forthwith¹; (2) dismissed Amaya's counterclaim; and (3) reserved on "accounting issues, attorney's fees and costs."

We affirm the trial court's order as to count one of the amended complaint, which determined that the real property is not divisible and is to be partitioned. We dismiss the appeal to the extent it seeks review of the trial court's dismissal of Amaya's counterclaim, as this portion of the order is interlocutory in nature, subject to change or reconsideration by the trial court, and is therefore non-final and non-appealable. S.L.T. Warehouse Co. v. Webb, 304 So. 2d 97 (Fla. 1974); Geico Gen. Ins. Co. v. Pruitt, 122 So. 3d 484 (Fla. 3d DCA 2013); Del Castillo v. Ralor Pharmacy, Inc., 512 So. 2d 315 (Fla. 3d DCA 1987).

Affirmed in part, dismissed in part and remanded.

¹ We have jurisdiction to review this portion of the non-final order. See Fla. R. App. P. 9.130(a)(3)(C)(ii). We note that, although the trial court in its order directed the forthwith sale of the partitioned property, it has the discretion, upon proper motion, to consider staying the sale of the partitioned property until a determination on the merits of the remaining claims.