IN THE UTAH COURT OF APPEALS

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Roger Bryner, Petitioner and Appellant, v. Lana Bryner, Respondent and Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20100234-CA F I L E D (June 17, 2010) 2010 UT App 163

Third District, Salt Lake Department, 044904183
The Honorable Randall N. Skanchy

Attorneys: Roger Bryner, Midvale, Appellant Pro Se

Before Judges Orme, Thorne, and Voros.

PER CURIAM:

Roger Bryner (Bryner) filed a document, which he captioned as a notice of appeal, or in the alternative, a petition for permission to appeal. In this case, Bryner seeks to directly appeal a February 25, 2010 memorandum decision and order that denied a motion to dismiss and set a hearing on contempt allegations. In the companion case, case number 20100233-CA, we denied the petition for permission to pursue an interlocutory appeal. This appeal is before the court on a sua sponte motion for summary disposition for lack of jurisdiction because it is taken from an order that is not final and appealable.

As one ground for his motion to dismiss, Bryner claimed that the pending contempt proceedings violate double jeopardy guarantees. The district court found that there had been no decision on the contempt proceedings and denied the motion to dismiss. Bryner claims that the underlying proceeding is a "criminal" contempt proceeding and that therefore the denial of a motion to dismiss premised on double jeopardy is appealable as a matter of right. Even if we construe the order as denying a motion to dismiss based upon a double jeopardy claim, the case Bryner relies upon for jurisdiction was overruled by the Utah

Supreme Court several years ago.[1] See State v. Harris, 2004 UT 103, ¶ 20, 104 P.3d 1250, overruling State v. Ambrose, 598 P.2d 354 (Utah 1979). In State v. Harris, the Utah Supreme Court considered whether it should, under State v. Ambrose, continue "to deem a trial court's denial of a motion to dismiss on double jeopardy grounds to be a final judgment." Id. ¶ 15. The supreme court concluded,

> [H]aving determined that the considerations driving Ambrose's holding with respect to final judgments are no longer present under our current appellate framework, we overrule Ambrose to the extent that it deviates from our general final judgment jurisprudence, and reaffirm that in criminal cases, it is the sentence itself which constitutes a final judgment from which [a defendant] has the right to appeal.

Id. ¶ 20 (internal citation and quotation marks omitted). Therefore, "a defendant may . . . file a petition for permission to appeal an interlocutory order denying a motion to dismiss on double jeopardy grounds." Id. Bryner filed such a petition, which was denied by this court in ordinary course.

Bryner appeals the denial of a motion to dismiss that left the contempt proceeding pending before the district court. As such, it is not a final appealable judgment and we lack jurisdiction to consider the appeal. See Houston v. Intermountain Health Care, 933 P.2d 403, 406 (Utah Ct. App. 1997) ("Generally, a judgment is not a final, appealable order if it does not dispose of all the claims in a case, including counterclaims."). Even if we construe the order as denying a motion to dismiss based upon a double jeopardy claim, the order is not final and appealable. Once a court has determined that it lacks jurisdiction, it "retains only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570

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[1]For purposes of this decision, it is both unnecessary and premature to determine whether the underlying proceeding will result in a criminal contempt order as defined in Von Hake v. Thomas, 759 P.2d 1162, 1168 (Utah 1988). Accordingly, we do not make that determination.

(Utah Ct. App. 1989). We dismiss the appeal for lack of jurisdiction.

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge

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J. Frederic Voros Jr., Judge