

IN THE UTAH COURT OF APPEALS

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| Herriman City, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Plaintiff and Appellee, |) | |
| |) | Case No. 20100718-CA |
| v. |) | |
| |) | F I L E D |
| Beatrice Davis, |) | (November 18, 2010) |
| |) | |
| Defendant and Appellant. |) | 2010 UT App 315 |

Third District, West Jordan Department, 101400197
The Honorable Dennis M. Fuchs

Attorneys: Clayton A. Simms, Salt Lake City, for Appellant
 Lorenzo K. Miller, South Jordan, for Appellee

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Beatrice Davis seeks to appeal the district court's August 3, 2010 order. This case is before the court on a sua sponte motion for summary disposition based upon lack of jurisdiction. We dismiss the appeal.

Davis seeks to appeal her conviction resulting from a proceeding before the Herriman City Justice Court. Utah Code section 78A-7-118(8) provides that "the decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance." Utah Code Ann. § 78A-7-118(8). Accordingly, absent a determination of the constitutionality of a statute or ordinance, the decision of the district court is final and this court has no jurisdiction to hear an appeal thereof. See State v. Hinson, 966 P.2d 273, 277 (Utah Ct. App. 1998).

Davis was convicted of class B misdemeanors in the Herriman City Justice Court. On January 28, 2010, pursuant to Utah Code section 78A-7-118(1), Davis filed a request for a trial de novo in the district court. See Utah Code Ann. § 78A-7-118(1). On August 3, 2010, the district court dismissed the proceeding pursuant to rule 38(h) of the Utah Rules of Criminal Procedure.

On September 1, 2010, Davis filed a notice of appeal seeking this court's review of the district court's de novo proceeding. However, the record does not demonstrate that the district court ruled on the constitutionality of a statute or ordinance as required by Utah Code section 78A-7-118(8). Therefore, because this case arose in the justice court and the district court did not rule on the constitutionality of a statute or ordinance, this court lacks jurisdiction to hear the appeal. See Hinson, 966 P.2d at 277. When a court lacks jurisdiction, it "retains only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989).

Accordingly, the appeal is dismissed for lack of jurisdiction.

James Z. Davis,
Presiding Judge

Carolyn B. McHugh,
Associate Presiding Judge

Gregory K. Orme, Judge