IN THE UTAH COURT OF APPEALS

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Kay Mendenhall and Spindyne, Inc., Plaintiffs and Appellants, v. Jack H. Kerlin; Kraig T. Higginson; and Raser Technologies, Inc., Defendants and Appellees.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20100468-CA F I L E D (November 12, 2010) 2010 UT App 317

Fourth District, Provo Department, 080402437
The Honorable James R. Taylor

Attorneys: Daren G. Mortenson, Salt Lake City, for Appellants
John H. Bogart and Marc T. Rasich, Salt Lake City, for Appellees

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Before Judges Davis, McHugh, and Voros.

PER CURIAM:

Kay Mendenhall and Spindyne, Inc. appeal the district court's order entered on May 5, 2010. This matter is before the court on a sua sponte motion for summary disposition. We dismiss the appeal without prejudice.

Generally, "[a]n appeal is improper if it is taken from an order or judgment that is not final." Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649. Indeed, this court lacks jurisdiction to consider an appeal unless it is taken from a final, appealable order. See id. ¶ 8. Previously, a signed minute entry could be considered a final, appealable order so long as it specified with certainty a final determination of the rights of the parties and was susceptible to enforcement. See Dove v. Cude, 710 P.2d 170, 171 (Utah 1985); see also Cannon v. Keller, 692 P.2d 714, 741 (Utah 1984).

The Utah Supreme Court has since determined that the prior framework for analyzing the finality of a minute entry or order for purposes of appeal was unworkable. See Giusti v. Sterling

Wentworth Corp., 2009 UT 2, ¶¶ 30-36, 201 P.3d 966. Under Giusti, a minute entry or order contemplated as final by the district court "must explicitly direct that no additional order is necessary." Id. ¶ 32. Otherwise, when the district court does not expressly direct that its order is the final order of the court, rule 7(f)(2) of the Utah Rules of Civil Procedure requires the parties to prepare and file an order to trigger finality for purposes of appeal. See id. ¶ 30.

The May 5, 2010 memorandum decision does not satisfy the requirements set forth in Giusti. The district court did not expressly indicate that the May 5, 2010 memorandum decision was the final order of the court. Furthermore, neither party prepared a final order as required by rule 7(f)(2) of the Utah Rules of Civil Procedure. Thus, the May 5, 2010 memorandum decision is not final for purposes of appeal and this court is required to dismiss the appeal.

Accordingly, the appeal is dismissed without prejudice to the filing of a timely appeal from a final order.

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James Z. Davis,
Presiding Judge

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Carolyn B. McHugh,
Associate Presiding Judge

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J. Frederic Voros Jr., Judge