

IN THE UTAH COURT OF APPEALS

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John Malan,)	PER CURIAM DECISION
)	
Plaintiff and Appellant,)	Case No. 20110710-CA
)	
v.)	F I L E D
)	(October 27, 2011)
Network Recovery Systems,)	
)	
Defendant and Appellee.)	2011 UT App 361

Third District, Salt Lake Department, 110900096
The Honorable Kate A. Toomey

Attorneys: John Malan, Midvale, Appellant Pro Se

Before Judges Davis, McHugh, and Roth.

¶1 John Malan seeks to appeal the trial court's decision granting summary judgment in favor of Network Recovery Systems, denying his own motion for summary judgment, and denying his motion to strike specific documents. This is before the court on its own motion for summary disposition based on the lack of jurisdiction due to the absence of a final order.

¶2 Generally, appeals may be taken only from final orders. See Utah R. App. P. 3(a). Pursuant to rule 7(f)(2) of the Utah Rules of Civil Procedure, unless the trial court approves an order submitted with a motion or otherwise directs that no further order is necessary, the prevailing party must formalize any decision by the trial court in a proposed order. See Utah R. Civ. P. 7(f)(2); *Giusti v. Sterling Wentworth Corp.*, 2009 UT 2, ¶¶ 27-28, 201 P.3d 966. If the prevailing party fails to provide an order, the nonprevailing party may do so to perfect the right to appeal a decision. See *Giusti*, 2009

UT 2, ¶ 28. If neither party submits an order, “the appeal rights of the nonprevailing party will extend indefinitely” because the appeal time will not be triggered by the entry of a final order under the rule. *Id.* ¶ 35.

¶3 In this instance, the trial court entered a memorandum decision disposing of multiple motions but did not specify that it was the final order of the court. Absent that language directing that no further order is necessary, a party must submit a formal order to provide finality for purposes of appeal. *See id.* Neither party has submitted such an order.¹ As a result, there is no final order from which to appeal. *See id.* Where an appeal is not properly taken, this court lacks jurisdiction and must dismiss it. *See Bradbury v. Valencia*, 2000 UT 50, ¶ 8, 5 P.3d 649.

¶4 Accordingly, this appeal is dismissed without prejudice to the timely filing of a notice of appeal after a final order is entered.

James Z. Davis,
Presiding Judge

Carolyn B. McHugh,
Associate Presiding Judge

Stephen L. Roth, Judge

¹Malan asserts that he has submitted a proposed order but it does not appear in the trial court record. There is no formal order in the record.