IN THE UTAH COURT OF APPEALS

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Eric Gorecki, Petitioner and Appellant, v. Kylene M. Gorecki, Respondent and Appellee.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20100735-CA F I L E D (November 26, 2010) 2010 UT App 331

Fifth District, St. George Department, 074500801
The Honorable Eric A. Ludlow

Attorneys: Odean Bowler, St. George, for Appellant
Lorelei Naegle, St. George, for Appellee

Before Judges McHugh, Thorne, and Voros.

PER CURIAM:

This appeal is before the court on a sua sponte motion for summary dismissal and on Appellee Kylene Gorecki's motion for summary dismissal and request for an award of attorney fees. We dismiss the appeal for lack of jurisdiction.

Rule 7(f)(2) of the Utah Rules of Civil Procedure provides,

> Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed orders upon being served with an objection or upon expiration of the time to object.

Utah R. Civ. P. 7(f)(2). In Giusti v. Sterling Wentworth Corp., 2009 UT 2, 201 P.3d 966, the Utah Supreme Court clarified the application of rule 7(f)(2) and reiterated that failure to comply

with the requirements of the rule would result in the appeal time for an appealing party continuing to run indefinitely. See 2009 UT 2, ¶ 35 ("If the court fails to satisfy rule 7(f)(2)'s exceptions and if the prevailing party fails to prepare an order for entry, the appeal rights of the nonprevailing party will extend indefinitely." (internal quotation marks omitted)). The Utah Supreme Court stated in Giusti:

> The rule is clear. A prevailing party shall prepare for entry a proposed order in conformity with the court's decision. There are only two exceptions to this mandate. First, if the court approves a proposed order that is submitted with an initial memorandum, then no additional order is necessary. Second, if the court directs that no additional order is necessary, then none is.

Id. ¶ 27.

Following a March 2010 hearing, the district court requested that the parties submit proposed orders resolving disputed issues in a bifurcated divorce, after which the court would announce its ruling. On April 6, 2010, Kylene, acting pro se, filed two documents with the district court, which were both captioned "Order." One document requested an order and contained argument in support of the request. Kylene served this document on counsel for Appellant Eric Gorecki. The second document was in the form of an order. This proposed order was not served on Eric's attorney. Nevertheless, the district court signed the order prepared by Kylene on April 6, 2010, which was the same day it was filed in the district court.

On April 8, 2010, Eric filed a motion to vacate the April 6, 2010 order, which the district court denied in an order dated June 11, 2010. The June 11, 2010 order was prepared by the court and neither stated that it was intended to serve as the final order nor directed either party to prepare an order.

On June 18, 2010, Eric filed a motion to reconsider or, alternatively, to set aside the April 6 and June 11, 2010 orders. This motion stated it was based upon rules 4, 5, 6, 7, and 60(b) of the Utah Rules of Civil Procedure. In a minute entry contained on a yellow sticky note, and date-stamped by the clerk on August 17, 2010, the court stated,

> The court is not going to revisit the exact same issues that I've previously ordered. The only issue that I will entertain is the parenting time & costs associated with those

> type of issues. The Utah Code will dictate how much parenting time that Mr. Gorecki will receive as a result of Ms. Gorecki's move to Texas/Oklahoma.

The note was dated "7/30/10" and initialed "EL" by the district court judge. It was later taped to a piece of paper and included in the record. Below the taped sticky note, someone had written and initialed, "Entered in the note screen F4." Below that, the same person had written and initialed "cc: Odean Bowler." Eric appeals this minute entry note.

Kylene moves to dismiss the appeal as untimely filed after either the April 6, 2010 order or the June 11, 2010 order. The April 6, 2010 proposed order prepared by Kylene was not served on Eric's counsel prior to being submitted to the court for signature, as required by rule 7(f)(2). Nevertheless, the district court signed and entered the order on the same day it was filed in the district court. Therefore, Eric had no opportunity to file objections. The April 6, 2010 order was not entered in compliance with rule 7(f)(2), and it did not trigger the time to appeal. Similarly, the June 11, 2010 order, which was prepared by the district court and denied both Eric's motion to vacate and his request for an order to show cause, also did not comply with rule 7(f)(2). The order did not direct that it was intended to serve as the order of the district court or that neither party was required to prepare an order in compliance with rule 7(f)(2). Because neither the April 6, 2010 order nor the June 11, 2010 order was entered in compliance with rule 7(f)(2) or Giusti, we deny Kylene's motion to dismiss the appeal with prejudice and her request for an award of attorney fees pursuant to rule 33 of the Utah Rules of Appellate Procedure.

Eric seeks to appeal the August 17, 2010 minute entry note, which announced that the district court would not consider a motion to set aside the April 6, 2010 order pursuant to rule 60(b) of the Utah Rules of Civil Procedure. An order disposing of a rule 60(b) motion to set aside a judgment is final and appealable. See Amica Mut. Ins. Co. v. Schettler, 768 P.2d 950, 970 (Utah 1989) ("It is well settled under Utah law, an order denying relief under Rule 60(b) is a final appealable order.") However, the minute entry note is not substantively a final order disposing of a rule 60(b) motion. Furthermore, the minute entry note does not state that it was intended to serve as the court's order without the necessity of a further order. No party prepared and served a proposed order in compliance with rule 7(f)(2).

Because there is no final appealable order in this case, we lack jurisdiction to consider the appeal. We dismiss the case

without prejudice to a timely appeal filed after the entry of a final appealable order.

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Carolyn B. McHugh,
Associate Presiding Judge

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William A. Thorne Jr., Judge

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J. Frederic Voros Jr., Judge