

IN THE UTAH COURT OF APPEALS

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Linda Rand,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20100751-CA
v.)	
)	F I L E D
<u>KOA Campgrounds, Victoria</u>)	(November 26, 2010)
<u>Orme, Doug Robinson, Don</u>)	
<u>Boothroyd, Marlene Boothroyd,</u>)	2010 UT App 330
<u>The Owners And Managers Of The</u>)	
<u>KOA Campgrounds, et al.,</u>)	
)	
Defendants and Appellees.)	

Third District, Salt Lake Department, 090908605
The Honorable Kate A. Toomey

Attorneys: Linda Rand, Salt Lake City, Appellant Pro Se
Joseph E. Minnock and Anna Nelson, Salt Lake City,
for Appellees

Before Judges McHugh, Thorne, and Voros.

PER CURIAM:

Linda Rand appeals an order granting summary judgment on the first and fifth causes of action from her complaint to Defendants KOA Campgrounds, Victoria Orme, Doug Robinson, Don Boothroyd, Marlene Boothroyd, and the owners and managers of the KOA Campgrounds (collectively, the KOA Defendants) and denying Rand's cross-motion for summary judgment. Rand's second, third, and fourth causes of action remain pending against the KOA Defendants. The district court also ruled that all causes of action remain pending against named defendants other than the KOA Defendants. This case is before the court on a sua sponte motion for summary dismissal and on the KOA Defendants' motion for summary dismissal.

Rule 3(a) of the Utah Rules of Appellate Procedure states that "[a]n appeal may be taken from a district . . . court to the appellate court with jurisdiction over the appeal from all final orders and judgments." Utah R. App. P. 3(a). An appeal taken from an order that is not final must be dismissed for lack of

appellate jurisdiction. See Bradbury v. Valencia, 2000 UT 50, ¶ 8, 5 P.3d 649. An order is final and appealable when it disposes of all of the claims against all parties on the merits. See id. ¶ 9; see also Loffredo v. Holt, 2001 UT 97, ¶ 12, 37 P.3d 1070; 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.").

The summary judgment that Rand seeks to appeal is not a final, appealable judgment and cannot be appealed as a matter of right at this time. The September 1, 2010 Order granted summary judgment to the KOA Defendants on the first and fifth causes of action in Rand's complaint and left the second, third, and fourth causes of action pending against the KOA Defendants. Even assuming, for purposes of considering the motions now before this court, that Rand did not accomplish service on the Hursts, who were also named in her complaint, the partial summary judgment dismissing only two of five causes of action against the KOA Defendants is not final and appealable. Furthermore, the partial summary judgment was not certified as final for purposes of appeal pursuant to rule 54(b) of the Utah Rules of Civil Procedure, see Utah R. Civ. P. 54(b), and Rand neither sought nor obtained permission to appeal from the interlocutory order pursuant to rule 5 of the Utah Rules of Appellate Procedure, see Utah R. App. P. 5. Accordingly, no exception to the final judgment rule applies in this case.

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 (Utah Ct. App. 1989). We dismiss the appeal for lack of jurisdiction, without prejudice to a timely appeal following the entry of a final appealable judgment.

Carolyn B. McHugh,
Associate Presiding Judge

William A. Thorne Jr., Judge

J. Frederic Voros Jr., Judge