

IN THE UTAH COURT OF APPEALS

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Adrienne Schroadter,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff,)	
)	Case No. 20100494-CA
v.)	
)	
<u>Adam Robert Schroadter</u> and)	F I L E D
Beverly Jeanne Schroadter aka)	(November 26, 2010)
Beverly Jeanne Voitanik,)	
)	2010 UT App 329
Defendants and Appellant.)	
_____)	
)	
Stagg Elder Care Services,)	
Inc.,)	
)	
Intervenor and Appellee.)	

Third District, Salt Lake Department, 090906401
The Honorable L.A. Dever

Attorneys: Christopher R. Hogle, Salt Lake City, for Appellant
Alexander Dushku, Salt Lake City, for Appellee

Before Judges McHugh, Thorne, and Voros.

PER CURIAM:

Adam Robert Schroadter appeals the district court's May 17, 2010 minute entry order. This case is before the court on Stagg Elder Care Services, Inc.'s (Stagg) motion to dismiss the appeal because it is not taken from a final, appealable order.

Stagg filed an Emergency Motion for Court Approval of Trustee's Resignation, Final Accounting, Administrative Fees Incurred, and Professional Fees Incurred. The motion did not contain a liquidated amount of costs and fees that Stagg sought to be awarded. On May 17, 2010, the district court entered a signed minute entry order in which the district court granted Stagg's emergency motion for resignation, final accounting, and fees incurred. The May 17, 2010 minute entry order also stated that the costs and fees "designated in the Joint Motion for the Trustee" were "affirmed," which referred to a separate motion

filed by Plaintiff Adrienne Schroadter, Defendant Adam Robert Schroadter, and Defendant Beverly Voitanik (the Schroadter family parties). Also on May 17, 2010, the district court signed and entered an order prepared by counsel for Adam, which was captioned Stipulated Order Granting Joint Motion to Rescind and Set Aside December 15, 2009 Order and January 27, 2010 Amended Order and Dismiss with Prejudice All Claims. The order was entered pursuant to the stipulation of the Schroadter family parties. The May 17, 2010 order rescinded and set aside the appointment of Stagg as trustee of the Borowski Trust and granted Stagg costs and fees incurred while it served. The May 17, 2010 order also stated, "Stagg may recover, from the Borowski Trust's \$22,000 cash on hand and up to \$20,000 from defendant Adam Schroadter, its costs and fees incurred as Trustee of the Borowski Trust." Thus, the order indicated the source of funds for payment of Stagg's costs and fees, but it did not award a liquidated sum.

On May 19, 2010, Adam filed his opposition to Stagg's emergency motion, although that motion had already been granted. On May 27, 2010, Stagg submitted its final accounting to the district court, which included a claim for attorney fees, accounting fees, and trustee fees in the total amount of \$222,109.11. In the June 4, 2010 minute entry order addressing Adam's opposition, the district court ruled that its May 17 minute entry was entered in reasonable reliance "that all matters were resolved, including any and all matters involving Stagg." Noting that Adam did not oppose Stagg's resignation, nor did he oppose the payment of costs and fees incurred up to May 7, 2010, the district court ordered that "Stagg is entitled to compensation pursuant to [Utah Code] sections 75-7-708, 75-7-709, and 75-7-1004." The district court "encourage[d] the parties to engage in mediation in addressing concerns of expenses and fees." However, the district court stated that if the parties were unable to resolve their concerns through mediation, they could submit the matter to the court for determination. On June 11, 2010, Adam filed a notice of appeal taken from "the May 17, 2010 Minute Entry to the extent that it granted Stagg Elder Care Services' May 7, 2010 Emergency Motion for Court Approval of Trustee's Resignation, Final Accounting, Administrative Fees Incurred and Professional Fees Incurred."

Stagg moves to dismiss this appeal because it is not taken from a final, appealable order. The May 17, 2010 minute entry order Adam appeals awarded Stagg its costs and fees incurred while it served as Trustee but it did not determine the amount to be awarded. The May 17, 2010 order prepared by counsel for Adam also did not liquidate the award, although it identified a source for its payment. The June 4, 2010 minute entry order stated that Stagg was entitled to compensation as provided by statute and

encouraged the parties to engage in mediation to agree upon an amount or to submit the matter to the court for a ruling if they are unable to agree upon an award of costs and fees.

In Promax Development Corp. v. Raile, 2000 UT 4, 998 P.2d 254, the Utah Supreme Court held that "a trial court must determine the amount of attorney fees awardable to a party before the judgment becomes final for the purposes of an appeal under Utah Rules of Appellate Procedure 3." Id. ¶ 15; see also Loffredo v. Holt, 2001 UT 97, ¶ 14, 37 P.3d 1070 (stating that the final judgment rule "does not stand for the proposition that the lower court need only resolve the majority of the claims," but "requires that all claims, including requests for attorney fees, be decided in order for a decision to be appropriately appealed to this court"). The May 17, 2010 minute entry order that is the subject of this appeal did not determine the amount of trustee fees, attorney fees, and costs to be awarded to Stagg. The May 17, 2010 order also did not state a liquidated amount of fees and costs awarded to Stagg, and the June 4, 2010 minute entry order deferred determination of the amount of the award for further action by the parties or the court. Accordingly, the appeal is not taken from a final appealable order and we lack jurisdiction to consider it.

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). Accordingly, we dismiss the appeal without prejudice to an appeal filed after the entry of a final, appealable order.

Carolyn B. McHugh,
Associate Presiding Judge

William A. Thorne Jr., Judge

J. Frederic Voros Jr., Judge