

IN THE UTAH COURT OF APPEALS

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Jack Bingham and Cheryl Bingham,)	MEMORANDUM DECISION
)	(Not For Official Publication)
)	
Plaintiffs and Appellants,)	Case No. 20080198-CA
)	
v.)	F I L E D
)	(June 26, 2008)
West Jordan City, a Utah municipal corporation,)	2008 UT App 239
)	
Defendant and Appellee.)	

Third District, Salt Lake Department, 070906541
The Honorable Anthony B. Quinn

Attorneys: Stephen G. Homer, West Jordan, for Appellants
Jeffrey Robinson, West Jordan, for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Jack and Cheryl Bingham appeal the district court's order entered January 31, 2008. This matter is before the court on a motion for summary disposition for lack of jurisdiction due to the absence of a final order.

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. For an order or judgment to be final, it must "dispose of all parties or claims to an action." Id. ¶ 10. The only exceptions to this requirement are where: (1) an appeal is permitted under the circumstances by statute, (2) the appellate court grants interlocutory appeal under rule 5 of the Utah Rules of Appellate Procedure, or (3) the trial court certifies the order as final under rule 54(b) of the Utah Rules of Civil Procedure. See id. ¶ 12.

On April 23, 2008, the trial court set aside summary judgment on West Jordan's counterclaim for nuisance. The trial court expressly stated that because there was an unresolved counterclaim, there was no final, appealable order. The parties do not assert nor demonstrate that this matter meets any

exception to the final judgment rule. Thus, this court lacks jurisdiction and must dismiss the appeal. See id. ¶ 8.

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

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge