

IN THE UTAH COURT OF APPEALS

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Joseph D. Bloch,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20070271-CA
v.)	
)	F I L E D
)	(May 3, 2007)
Jerry Gardner and Jean Lasarre)	
Gardner,)	2007 UT App 157
)	
Defendants and Appellees.)	

Third District, Salt Lake Department, 050900797
The Honorable L.A. Dever

Attorneys: Robert E. Mansfield, Stephen K. Christiansen, and
Jacob S. Taylor, Salt Lake City, for Appellant
David R. Olsen, Ruth Lybbert, and Paul M. Simmons,
Salt Lake City, for Appellees

Before Judges Greenwood, Davis, and Orme.

PER CURIAM:

Joseph D. Bloch seeks to appeal the entry of judgment against him and the denial of his motion for new trial. This is before the court on Appellees Jerry and Jean Gardners' motion to dismiss based on lack of jurisdiction due to the absence of a final order.

After a two-day bench trial on the disputed issue of ownership of a building, the trial court ruled that Bloch held the building in a constructive trust for the Gardners. The trial court entered an order with supporting findings of fact and conclusions of law on November 10, 2006. The judgment specifically reserved counterclaims asserted by the Gardners. The order stated, "[t]he issues raised by the Gardners' counterclaims for damages for breach of fiduciary duty, negligent and intentional infliction of emotional distress, and abuse of process are reserved."

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. To be final, an order must end the

controversy between the litigants. See id. Where counterclaims remain pending, there is no final order to appeal. See id. at ¶11. As expressly reserved in the trial court's order, the Gardners' counterclaims remain pending before the trial court. Therefore, the order appealed is not final. As a result, this court lacks jurisdiction and must dismiss the appeal. See id. at ¶8.

Bloch argues that the Gardners asserted a specific counterclaim only as an alternative claim, which was resolved by the trial court's order. As a result, the order should be considered final. However, the Gardners asserted several affirmative claims for relief, not just a single claim in the alternative. The claims reserved in the order include tort claims not resolved by the resolution of ownership of the building. With counterclaims pending, the order is clearly interlocutory in nature and this court lacks jurisdiction to consider it.

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

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

Gregory K. Orme, Judge