IN THE UTAH COURT OF APPEALS

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Analisa Bowen (Palmer), Plaintiff and Appellee, v. Tonna Lee Bowen, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20100525-CA F I L E D (October 7, 2010) 2010 UT App 274

Second District, Bountiful Department, 073800011
The Honorable Glen R. Dawson

Attorneys: Tonna Lee Bowen, San Clemente, California, Appellant Pro Se
Nolan J. Olsen and Matthew N. Olsen, Midvale, for Appellee

Before Judges Davis, Voros, and Roth.

PER CURIAM:

Defendant Tonna Lee Bowen appeals a summary judgment entered on May 25, 2010. This case is before the court on Plaintiff Analisa Bowen's motion for summary disposition.

Plaintiff contends that Defendant's notice of appeal filed on June 25, 2010, was untimely because it was filed on the thirty-first day after entry of the May 25, 2010 summary judgment. After a review of the trial court record, we conclude that the May 25, 2010 summary judgment was not a final, appealable judgment that concluded the case in the district court. Accordingly, we dismiss the appeal for lack of jurisdiction without prejudice to a timely appeal filed after the entry of a final judgment.

The May 25, 2010 summary judgment granted Plaintiff's motion for summary judgment, ordering, in part, that Plaintiff "shall be granted judgment against the Defendant for one-third of the sum received wrongfully by the Defendant" and that the children of a deceased beneficiary could move to intervene in order to receive "their one-third judgment as against the Defendant." The summary judgment states that Plaintiff and Defendant can stipulate to the

appointment of a successor trustee or, if unsuccessful, will submit the matter to the court. In addition, the summary judgment states that Plaintiff and Defendant can agree to the sum of money the Defendant wrongfully received and if they are unable to do so, "the Plaintiff is to submit a Motion, setting forth the Plaintiff's evidence as to the amount and the Defendant can file a reply with her evidence to the court in the event the Defendant disagrees." The court will then issue a ruling. Finally, the summary judgment states that the district court "shall issue an Addendum" to the summary judgment "as to the amount of money the Defendant wrongfully received, the judgment amount, and the appointment of a successor trustee." Based on the foregoing, the May 25, 2010 summary judgment was not intended to be the final judgment in the underlying case and it specifically provided that the judgment will be amended to implement the summary judgment. As such, the May 25, 2010 summary judgment is not final and appealable, and we lack jurisdiction to consider this appeal. The May 25, 2010 summary judgment also did not trigger the running of the time for appeal.

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.

The summary judgment entered on May 25, 2010, is not final and appealable because it directed the parties to take further action to determine the amount of the judgment and accomplish the appointment of a successor trustee through an addendum to the judgment. The addendum to the summary judgment, when it is signed by the judge and filed with the clerk, will be the final, appealable judgment of the district court.

The order Defendant seeks to appeal is an interlocutory order. She did not timely seek or obtain permission to appeal under rule 5 of the Utah Rules of Appellate Procedure, nor was the order certified as final and appealable under rule 54(b) of the Utah Rules of Civil Procedure.

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 for lack of jurisdiction,

without prejudice to an appeal filed after the entry of the final judgment.

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James Z. Davis,
Presiding Judge

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J. Frederic Voros Jr., Judge

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Stephen L. Roth, Judge