

IN THE UTAH COURT OF APPEALS

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Alan B. Brown, Inc., P.S.,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20050283-CA
v.)	
)	F I L E D
Altius Health Plans, Inc.)	(August 18, 2005)
)	
Defendant and Appellee.)	2005 UT App 355

Third District, Salt Lake Department, 040913568
The Honorable J. Dennis Frederick

Attorneys: Alan B. Brown, Salt Lake City, for Appellant
Daniel L. Steele and Taylor L. Anderson, Salt Lake
City, for Appellee

Before Judges Davis, Orme, and Thorne.

PER CURIAM:

This case is before the court on its own motion for summary dismissal for lack of jurisdiction due to the absence of a final, appealable order.

Appellant Alan B. Brown, Inc., P.S. (Brown) concedes that this court lacks jurisdiction over this appeal because the order from which it appealed is not a final, appealable order. See Utah R. App. P. 3(a). Accordingly, this appeal is dismissed without prejudice to the filing of a timely appeal after a final judgment has been entered or as otherwise permitted by law.

Appellee Altius Health Plans, Inc. (Altius) has also moved this court for attorney fees and costs pursuant to rule 33 of the Utah Rules of Appellate Procedure. Altius argues that it is entitled to fees and costs on the basis that this appeal is frivolous. See Utah R. App. P. 33. "[A] frivolous appeal . . . is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law." Utah R. App. P. 33(b). We have held an appeal to be frivolous for purposes of this rule where "reasonable investigation by appellant's counsel would have

immediately demonstrated the inappropriateness of [the] appeal." Allred v. Allred, 807 P.2d 350, 351 (Utah Ct. App. 1991).

We hold that the underlying appeal is frivolous pursuant to rule 33. See Utah R. App. P. 33(a), (b). The appeal was clearly from a nonfinal order and no reason was given by Brown for its premature filing of the notice of appeal. As a result, this case is remanded to the district court for determination of an appropriate award of attorney fees to compensate Altius for all attorney fees reasonably incurred in resisting this frivolous appeal. The district court should also determine whether the fees should be paid by Brown, its attorney, or both. See Utah R. App. P. 33(a); see also Allred, 807 P.2d at 352. Single costs on appeal are also awarded to appellee. See Utah R. App. P. 33(a).

Accordingly, the appeal is dismissed and the case is remanded to the district court for further proceedings consistent with this decision.

James Z. Davis, Judge

Gregory K. Orme, Judge

THORNE, Judge (concurring and dissenting):

I concur that the appeal should be dismissed. However, I would not order attorney fees without a factual finding by the district court that the appeal was frivolous.

William A. Thorne Jr., Judge