

IN THE UTAH COURT OF APPEALS

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Roger Bryner,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20060963-CA
v.)	
)	
Emily Smoak; and Cohne,)	F I L E D
Rappaport & Segal,)	(January 5, 2007)
)	
Defendants and Appellees.)	2007 UT App 2

Third District, Salt Lake Department, 050922650
The Honorable Robert K. Hilder

Attorneys: Roger Bryner, Midvale, Appellant Pro Se
A. Howard Lundgren, Emily A. Broadhead-Smoak, Jeffrey
L. Silvestrini, and Thomas J. Burns, Salt Lake City,
for Appellees

Before Judges Bench, Greenwood, and Thorne.

PER CURIAM:

Roger Bryner appeals an order of the associate presiding judge of the Third District Court denying a motion to disqualify the assigned judge as well as several other third district judges. This case is before the court on a sua sponte motion for summary disposition based upon the lack of a final appealable order.

This court does not have jurisdiction to consider an appeal unless it is taken from a final judgment or order, see Utah R. App. P. 3(a), or qualifies for an exception to the final judgment rule. See Loffredo v. Holt, 2001 UT 97, ¶¶10, 15, 37 P.3d 1070. An order is final only if it disposes of the case as to all parties and "finally dispose[s] of the subject-matter of the litigation on the merits of the case." Bradbury v. Valencia, 2000 UT 50, ¶9, 5 P.3d 649 (quotations and citation omitted).

The denial of a motion to disqualify a judge is not a final appealable order because it does not dispose of all issues in the litigation. See id.; see also Johnson v. Johnson, 2004 UT App

249 (per curiam) (dismissing appeal of order denying motion to disqualify judge based upon lack of jurisdiction because there was no final order). The denial of a motion to disqualify a judge is an interlocutory order. Accordingly, there is no right to appeal from that order. Bryner could have filed a timely petition for permission to appeal in this court under rule 5 of the Utah Rules of Appellate Procedure, but he did not do so.

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. 1998). Accordingly, we dismiss the appeal.¹

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge

William A. Thorne Jr., Judge

¹Bryner is not left without a remedy, he may raise the issues regarding his motion to disqualify in an appeal after entry of a final appealable order.