

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

| | | |
|-------------------------------|---|--------------------------------|
| Hailey Calhoun, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Plaintiff and Appellant, |) | |
| |) | Case No. 20090832-CA |
| v. |) | |
| |) | |
| Tosh, Inc., dba Check City, a |) | F I L E D |
| Utah corporation, |) | (December 17, 2009) |
| |) | |
| Defendant and Appellee. |) | 2009 UT App 379 |

Third District, West Jordan Department, 090401123
The Honorable Terry L. Christiansen

Attorneys: Brian W. Steffensen, Salt Lake City, for Appellant
Richard J. Armstrong and Brinton M. Wilkins, Salt
Lake City, for Appellee

Before Judges Greenwood, Davis, and Thorne.

PER CURIAM:

Hailey Calhoun appeals from the district court's order granting Tosh, Inc.'s motion for summary judgment. This case is before the court on its sua sponte motion for summary disposition based on lack of jurisdiction.

"An appeal is improper if it is taken from an order or judgment that is not final, see Utah R. App. P. 3(a), unless it fits within an exception to the final judgment rule." Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649. "For an order or judgment to be final, it must dispose of the case as to all the parties, and finally dispose of the subject-matter of the litigation on the merits of the case." Id. (internal quotation marks omitted). "In other words, a judgment is final when it ends the controversy between the parties litigant." Id. (internal quotation marks omitted).

The order appealed from is not a final, appealable order. Tosh, Inc. has filed a motion for attorney fees. "A judgment is not final if the trial court has failed to determine whether attorney fees should be awarded." Loffredo v. Holt, 2001 UT 97, ¶ 12, 37 P.3d 1070. Therefore, because the district court has

not yet resolved Tosh, Inc.'s claim for attorney fees, the judgment from which Calhoun appeals is not final. Accordingly, we lack jurisdiction over the appeal and "retain only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). We dismiss the appeal for lack of jurisdiction, without prejudice to a timely appeal after entry of a final judgment.

Pamela T. Greenwood,
Presiding Judge

James Z. Davis, Judge

William A. Thorne Jr., Judge