IN THE UTAH COURT OF APPEALS

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Capital One Bank (USA), NA, Plaintiff and Appellant, v. Benjamin M. Lightner, Defendant and Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20100624-CA F I L E D (October 7, 2010) 2010 UT App 280

Third District, West Jordan Department, 080419930
The Honorable Mark S. Kouris

Attorneys: William A. Mark and Jacob H.B. Franklin, Sandy, for Appellant

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Before Judges Davis, Voros, and Roth.

PER CURIAM:

This case is before the court on a sua sponte motion for summary disposition for lack of jurisdiction. At the conclusion of the bench trial, Plaintiff Capital One Bank (USA), NA (Capital One) asked whether the court would prepare an order or whether the Defendant Benjamin M. Lightner should prepare an order as the prevailing party. In response, the district court stated, "I'll just put it in a minute entry." The district court record contains neither a signed order nor a signed minute entry stating that it is the final order of the court.

A judgment is entered when it is signed by the judge and filed with the clerk. See Utah R. Civ. P. 58A(c). It is well-established that an unsigned minute entry cannot function as the final judgment for purposes of appeal. See Ron Shepard Ins. v. Shields, 882 P.2d 650, 653 (Utah 1994) (stating it is well settled that an unsigned minuted entry does not constitute an entry of judgment, nor is it a final judgment for purposes of appeal); Sather v. Gross, 727 P.2d 212, 213 (Utah 1986)(per curiam) ("An unsigned minute entry does not constitute a final judgment for purposes of appeal, and this Court has no jurisdiction to consider the merits of plaintiff's appeal."); Utah State Tax Comm'n v. Erekson, 714 P.2d 1151, 1152 (Utah 1986) (per curiam) ("We have consistently held that a minute entry

unsigned by the court and not susceptible of enforcement, does not constitute a final, appealable order.").

Capital One contends that "the minute entry, found in the district court docket which was submitted to this court, is the reflection of the District Court's final ruling denying Plaintiff's claims." Capital One also argues "that the direction of the District Court regarding the entry of a minute entry to reflect the Court's ruling instead of an order fulfills the requirements for an appeal." Capital One relies upon Giusti v. Sterling Wentworth Corp., 2009 UT 2, 201 P.2d 966. However, in Giusti, the Utah Supreme Court reaffirmed its holding in Code v. Utah Department of Health, 2007 UT 43, ¶ 4, 162 P.3d 1097, "that 'whenever' a court intends any 'document' to constitute its final action, the court must explicitly direct that no additional order is necessary." Guisti 2009 UT 2, ¶ 32. Capital One's proposed reading of Giusti as support for dispensing entirely with the requirement of a signed order, judgment, or "document" flies in the face of the very regularity that the Utah Supreme Court's decisions in Code and Giusti were intended to establish.

Nothing in the Giusti decision was intended to dispense with the basic requirement that a signed, final judgment is necessary to commence the running of the time for appeal. To the contrary, the supreme court stated in Giusti,

> [In Code], we emphasized the broad and mandatory nature of rule 7(f)(2): "[a] court should include [an] explicit direction whenever it intends a document--a memorandum decision, minute entry, or other document--to constitute its final action." Otherwise, rule 7(f)(2) requires the preparation and filing of an order to trigger finality for the purposes of appeal.

Id. ¶ 30 (quoting Code, 2007 UT 43, ¶ 6 (emphases added). Furthermore, the supreme court clarified in Giusti that rule 3 of the Utah Rules of Appellate Procedure and rule 7(f)(2) of the Utah Rules of Civil Procedure work in concert, stating that "while rule 3 provides the substantive requirement for a decision's finality--that it end the controversy between the parties--rule 3 does not eviscerate the procedural requirements of rule 7 for triggering the appeal period once a final decision is rendered." Id. ¶ 34. Thus, while "pursuant to rule 3, parties may take an appeal only from a final decision," "[i]t is the entry of the final order according to rule 7(f)(2) that triggers the appeal period." Id. ¶ 35.

Capital One's position is essentially that by printing a copy of the district court's docket, it has created the minute entry that the district court referred to in the June 23, 2010 transcript, which Capital One then claims the court intended to serve as its final judgment. This intent is by no means clear from the content of the docket entry. Nevertheless, an unsigned minute entry contained in the district court docket--even if later printed by a party--cannot satisfy the requirements of rule 7(f)(2). Giusti and Code cannot be plausibly read to allow a district court to wholly dispense with the requirement that a document intended to serve as a final judgment must be signed by the court and filed with the clerk. In the absence of a final, appealable judgment, "the appeal rights of the nonprevailing party will extend indefinitely." Code, 2007 UT 43, ¶ 6 n.1.

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