IN THE UTAH COURT OF APPEALS

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Logan City, Plaintiff and Appellee, v. Katha Lyn Cronquist, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060014-CA F I L E D (April 27, 2006) 2006 UT App 175

First District, Logan Department, 055100607
The Honorable Thomas L. Willmore

Attorneys: A.W. Lauritzen, Logan, for Appellant
Lee Edwards, Logan, for Appellee

Before Judges Bench, Billings, and Thorne.

PER CURIAM:

Appellant Katha Lyn Cronquist appeals her conviction following a trial de novo in district court of driving under the influence of alcohol, a class B misdemeanor. The case is before the court on a sua sponte motion for summary dismissal.

Cronquist entered a conditional guilty plea during de novo proceedings in district court following a justice court conviction. The conditional plea sought to preserve for appeal claims that the arresting officer was without statutory authority to stop, seize, and arrest Cronquist and the stop violated the Fourth and Fourteenth Amendments to the United States Constitution, as well as other unidentified issues to be raised based on the record.

Utah Code section 78-5-120(7) states that "[t]he decision of the district court [in a case originating in a justice court] is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance." Utah Code Ann. § 78-5-120(7) (2002). Accordingly, "absent an issue regarding the constitutionality of a statute or ordinance, the decision of the district court is final and this court has no jurisdiction to hear an appeal thereof." State v. Hinson, 966 P.2d 273, 277 (Utah Ct. App. 1998). The district court did not rule on the

constitutionality of a statute or ordinance, and the issues that Cronquist sought to preserve for appeal are not appealable under section 78-5-120(7).

In response to the sua sponte motion, Cronquist now purportedly challenges the constitutionality of section 78-5-120(7) as applied to her appeal. She contends that the statutory limitation on her right to appeal the decision following a trial de novo denies her due process. She also contends that the limitation on her right to appeal violates the separation of powers, apparently because the legislature has imposed restrictions on the judicial branch's ability to consider an appeal. Neither issue was raised, nor ruled upon, in district court. We cannot consider issues raised for the first time in an appeal to this court from the district court's decision after a trial de novo.

The appeal is not taken from a district court ruling on the constitutionality of a statute or ordinance, and it is not within our appellate jurisdiction. 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.

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Russell W. Bench,
Presiding Judge

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Judith M. Billings, Judge

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William A. Thorne Jr., Judge