

IN THE UTAH COURT OF APPEALS

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C. Robert Dahl, as Investment)	MEMORANDUM DECISION
Trustee of the Dahl Family)	(Not For Official Publication)
Irrevocable Trust,)	
)	Case No. 20090615-CA
Plaintiff and Appellee,)	
)	
v.)	F I L E D
)	(October 1, 2009)
)	
Steve S. Christensen and)	2009 UT App 280
Hirschi Christensen, PLLC,)	
)	
Defendants and Appellants.)	

Fourth District, Provo Department, 090401273
The Honorable Fred D. Howard

Attorneys: David P. Hirschi, Justin R. Baer, and Benjamin K. Lusty, Salt Lake City, for Appellants
Rosemond G. Blacklock, Provo, for Appellee

Before Judges Bench, Orme, and McHugh.

PER CURIAM:

Plaintiff C. Robert Dahl, Trustee of the Dahl Family Revocable Trust, filed a complaint alleging causes of action for (1) slander of title and (2) wrongful lien against real property. Dahl obtained summary relief under the wrongful lien statute in the form of a judgment ordering the removal of the attorney lien and awarding statutory damages of \$10,000, plus attorney fees. See generally Utah Code Ann. § 38-9-7 (2005) (allowing a holder of record title in real property to seek summary relief to nullify a wrongful lien). Defendants Steve S. Christensen and the law firm of Hirschi Christensen, PLLC (collectively Hirschi Christensen) appeal.

Dahl seeks dismissal of the appeal, arguing that it is not taken from a final, appealable judgment because the slander of title cause of action was not resolved. In response, Hirschi Christensen claims that the partial judgment on the wrongful lien claim necessarily disposed of the slander of title claim because both causes of action were based upon the same facts and a single lien, and because the district court awarded damages.

Dahl moved the district court for "summary relief" under Utah Code section 38-9-7, which states, in part, that "[a] summary proceeding under this section is only to determine whether or not a document is a wrongful lien." Id. § 38-9-7(4). If the court determines, after a hearing, "that the document is a wrongful lien, the court shall issue an order declaring the wrongful lien void ab initio, releasing the property from the lien, and awarding costs and reasonable attorney's fees to the petitioner." Id. § 38-9-7(5)(a). However, if the statutory wrongful lien petition "contains a claim for damages, the damage proceedings may not be expedited." Id. § 38-9-7(7). In his motion for summary relief, Dahl sought a judgment for damages for the wrongful lien under Utah Code section 38-9-4(1), which the district court granted. See Utah Code Ann. § 38-9-4(1) (Supp. 2008). As a result, the district court exceeded the statutory authorization for summary relief under section 38-9-7 by granting statutory damages in the amount of \$10,000 under Utah Code section 38-9-4, in the expedited proceeding. Although we conclude that this does not render the judgment final and appealable, it supports Hirschi Christensen's claim that the award of damages created confusion about the finality of the judgment.

After filing this appeal, Hirschi Christensen sought a stay of execution on the wrongful lien judgment in the district court. In that motion, Hirschi Christensen argued that the judgment was final and appealable and effectively resolved the slander of title claim. The district court ruled that the judgment was not final and appealable because the court did not enter judgment on the cause of action for slander of title. The district court also stated that Hirschi Christensen had not filed a motion seeking certification of the judgment as final under rule 54(b) of the Utah Rules of Civil Procedure. Dahl supplemented his motion for summary dismissal by providing a copy of the district court's ruling denying the motion for stay.

The Utah Supreme Court considered a claim in Anderson v. Wilshire Investment, 2005 UT 59, 123 P.3d 393, that a ruling in a summary proceeding to nullify a wrongful lien had the effect of resolving a quiet title claim. The supreme court concluded that "even if the district court intended to dismiss each of the claims before it, it did not have authority to do so at the summary lien proceeding." Id. ¶ 18. "[T]he district court has limited authority at a summary lien proceeding" and "may decide only whether (1) a document is a wrongful lien . . . and (2) [whether] a prevailing party is entitled to attorney fees." Id. ¶ 20. Although the district court in the present case incorrectly expedited a claim for damages attributable to the wrongful lien, the court could not and did not dispose of the slander of title claim in the summary proceeding. "[W]here a

party has multiple claims arising from the same facts, the determination of one claim does not result in a final judgment unless the disposal of that claim precludes the party from proceeding on the other claims." Id. ¶ 19. Therefore, the partial judgment being appealed did not resolve all claims in the underlying case and was not final and appealable.

Dahl claims that the appeal was frivolous because it should have been clear that it was not taken from a final judgment. We conclude that it was not frivolous to assert that the judgment resolved both the statutory wrongful lien claim and the factually similar slander of title claim, particularly where the district court awarded damages for the wrongful lien in the summary proceeding.

Accordingly, we dismiss the appeal for lack of jurisdiction, without prejudice to an appeal filed after the entry of a final judgment. We deny the request for sanctions under rule 33 of the Utah Rules of Appellate Procedure.

Russell W. Bench, Judge

Gregory K. Orme, Judge

Carolyn B. McHugh, Judge