

IN THE UTAH COURT OF APPEALS

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Delta Delta Delta, an Illinois )	MEMORANDUM DECISION
non-profit corporation, )	(Not For Official Publication)
)	
Plaintiff and Appellee, )	Case No. 20080199-CA
)	
v. )	F I L E D
)	(May 8, 2008)
Theta Phi House Corporation of )	
Delta Delta Delta, a Utah non- )	2008 UT App 164
profit corporation, )	
)	
Defendant and Appellant. )	

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Third District, Salt Lake Department, 060912357  
The Honorable Anthony B. Quinn

Attorneys: George K. Fadel, Bountiful, for Appellant  
John R. Lund and Leilani C. Marshall, Salt Lake City,  
for Appellee

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Before Judges Greenwood, Billings, and McHugh.

PER CURIAM:

Theta Phi House Corporation of Delta Delta Delta (Theta Phi) appeals the district court's order entered February 14, 2008. This matter is before the court on its own motion for summary disposition for lack of jurisdiction due to the absence of a final order.

Generally, "[a]n appeal is improper if it is taken from an order or judgment that is not final." Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649. For an order or judgment to be final, it must "dispose of all parties or claims to an action." Id. ¶ 10. The only exceptions to this requirement are where: (1) an appeal is permitted under the circumstances by statute, (2) the appellate court grants interlocutory appeal under rule 5 of the Utah Rules of Appellate Procedure, or (3) the trial court certifies the order as final under rule 54(b) of the Utah Rules of Civil Procedure. See id. ¶ 12.

Theta Phi asserts that the order granting partial summary judgment, which required it to convey the property to Delta Delta

Delta was a final, appealable order, despite there being additional claims before the trial court that arose from the same operative facts. Theta Phi cites In re Voorhees Estate, 366 P.2d 977 (Utah 1961) and Cahoon v. Cahoon, 641 P.2d 140 (Utah 1982) for the proposition that an order requiring the conveyance of real property is a final order. However, these cases are readily distinguishable from the instant action. Furthermore, the supreme court has more recently reiterated that an order granting partial summary judgment that resolves property ownership is not a final, appealable order unless no additional claims remain pending before the district court that arose from the same operative facts. See Furniture Distrib. Ctr. v. Miles, 821 P.2d 1165, 1167 (Utah 1991). Here, the district court's order granting partial summary judgment did not resolve all of the claims pending before the district court that arose from the same operative facts. Thus, the order granting partial summary judgment was an interlocutory order.

Theta Phi has not directed this court to statutory authority permitting its appeal from the non-final order. Theta Phi also elected not to file a petition for permission to appeal the interlocutory order as required by rule 5 of the Utah Rules of Appellate Procedure. See Utah R. App. P. 5. Furthermore, because the district court's order was not certified as final, this court cannot use its discretion to consider Theta Phi's notice of appeal as a petition for permission to appeal an interlocutory order. See id. Thus, this court lacks jurisdiction and must dismiss the appeal. See Bradbury, 2000 UT 50, ¶ 8.

Accordingly, this appeal is dismissed without prejudice to the filing of a timely appeal from a final order.

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Pamela T. Greenwood,  
Presiding Judge

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Judith M. Billings, Judge

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Carolyn B. McHugh, Judge