IN THE UTAH COURT OF APPEALS

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Bonneville Billing and Collections, Plaintiff and Appellee, v. Designscape, LLC, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090395-CA F I L E D (August 27, 2009) 2009 UT App 239

Second District, Layton Department, 060603389
The Honorable David M. Connors

Attorneys: Sarah J. Beck, Salt Lake City, for Appellant
G. Scott Jensen and Kevin P. Sullivan, Ogden, for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

This case is before the court on a sua sponte motion to dismiss the appeal because Defendant Designscape, LLC's (Designscape) notice of appeal was untimely filed after the entry of the March 16, 2009 order denying Designscape's motion to set aside a judgment under rule 60(b) of the Utah Rules of Civil Procedure. In the alternative, the sua sponte motion seeks to dismiss the appeal for lack of jurisdiction on grounds that the May 20, 2008 order was not a final, appealable judgment because it did not include the liquidated amount of attorney fees awarded to Plaintiff Bonneville Billing and Collections (Bonneville). Designscape does not dispute that the May 20, 2008 order was not final and appealable. However, Bonneville argues that the court should disregard that May 20, 2008 order and deem an April 14, 2008 signed minute entry to be a final judgment from which no timely appeal was initiated.

Designscape's notice of appeal states that it appeals the March 16, 2009 order denying its rule 60(b) motion. While a rule 60(b) motion does not affect the time to appeal from the underlying judgment under rule 4(b) of the Utah Rules of Appellate Procedure, an order denying a rule 60(b) motion is a

final, appealable order. See Amica Mut. Ins. Co. v. Schettler, 768 P.2d 950, 970 (Utah Ct. App. 1989). However, insofar as Designscape appeals the March 16, 2009 order denying its rule 60(b) motion, the appeal was untimely and we lack jurisdiction to consider it on the merits.

Turning to Bonneville's argument, we note that the April 14, 2008 signed minute entry directed counsel for Bonneville to prepare further findings and an order consistent with the district court's oral ruling and the signed minute entry. Because the court included a specific direction to prepare a further order, the signed minute entry cannot be a final judgment for purposes of appeal. In Swenson Associates Architects v. State, 889 P.2d 415 (Utah 1994), the Utah Supreme Court stated that while a signed minute entry "may be a final order for purposes of appeal" in appropriate circumstances, such treatment was "appropriate only where the ruling specifies with certainty a final determination of the rights of the parties and is susceptible of enforcement." 889 P.2d at 417. Therefore, the supreme court held that in order to be a final, appealable judgment, the minute entry "must be clear that that which is offered as the record of a judgment is really such and not an order for a judgment or a mere memorandum from which the judgment must be drawn." Id. In Swenson, as in the present case, the signed minute entry clearly directed the preparation of a further order containing the district court's findings and judgment and, thus, demonstrated that it was not intended to be a final order. See id. Accordingly, the April 14, 2008 minute entry was not a final, appealable order.

Apparently Bonneville's counsel prepared a final order based upon its complaint and not based upon the district court's oral ruling or signed minute entry. The May 20, 2008 order differs from the April 14, 2008 minute entry in two respects: it awards a slightly greater amount of damages and it omits the liquidated amount of attorney fees and instead includes an award of "reasonable attorney fees." The omission of a liquidated attorney fees award made the May 20, 2008 order nonfinal for purposes of appeal. See ProMax Dev. Corp. v. Raile, 2000 UT 4, ¶ 15, 998 P.2d 254 ("[A] trial court must determine the amount of attorney fees awardable to a party before the judgment becomes final for the purposes of an appeal under Utah Rule of Appellate Procedure 3."). Because we dismiss the appeal for lack of jurisdiction, we cannot consider Designscape's motion for summary reversal.

We dismiss this appeal insofar as it seeks review of the March 16, 2009 order denying Designscape's rule 60(b) motion because the notice of appeal was not timely and we lack jurisdiction to consider the merits. Insofar as this appeal can

be construed as an appeal of either the April 14, 2008 signed minute entry or the May 20, 2008 order, we dismiss the appeal for lack of jurisdiction because it is not taken from a final, appealable order. This dismissal is without prejudice to a timely appeal from the underlying judgment that is filed after entry of a final, appealable order.

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Russell W. Bench, Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge