

IN THE UTAH COURT OF APPEALS

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Patricia Dickamore,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20060848-CA
v.)	
)	
<u>Ogden Regional Medical Center</u>)	F I L E D
and Weber State University,)	(December 21, 2006)
)	
Defendants and Appellee.)	<u>2006 UT App 512</u>

Second District, Ogden Department, 050901360
The Honorable Parley R. Baldwin

Attorneys: James R. Hasenyager and Peter W. Summerill, Ogden,
for Appellant
Robert C. Morton, Salt Lake City, for Appellee

Before Judges Bench, Billings, and Thorne.

PER CURIAM:

This case is before the court on its own motion for summary dismissal for lack of jurisdiction. See Utah R. App. P. 10. The issue is whether the trial court's certification, entered pursuant to rule 54(b) of the Utah Rules of Civil Procedure, is defective, thereby divesting this court of jurisdiction to consider the non-final order. Neither party filed a response to the court's motion.

The order certified by the trial court as final granted summary judgment in favor of Ogden Regional Medical Center. Other claims and parties remain in this case. Rule 54 allows the trial court to "direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination by the court that there is no just reason for delay and upon an express direction for the entry of judgment." Utah R. Civ. P. 54(b). An order certifying a judgment as final under rule 54(b) must include "findings supporting the conclusion that such orders are final," by explaining "the lack of factual overlap between the certified and remaining claims." Bennion v. Pennzoil Co., 826 P.2d 137, 139

(Utah 1992). In addition, a rule 54(b) order must contain a brief explanation of the trial court's "rationale as to why there is no just reason for delay." Id.

The certification order is deficient in that it fails to recite, much less explain, why there is no just reason for delay. Moreover, there is no explanation whatsoever regarding "the lack of factual overlap between the certified and remaining claims." Id. The order simply states that the decision "is hereby a final order of the court." As a result, the certification order is inadequate and this court lacks jurisdiction. See Backstrom Family Ltd. P'ship v. Hall, 751 P.2d 1157, 1159 (Utah Ct. App. 1988). Once the court determines 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, the appeal is dismissed without prejudice to the timely filing of a notice of appeal from a final order, or a properly certified order pursuant to rule 54(b) of the Utah Rules of Civil Procedure.

Russell W. Bench,
Presiding Judge

Judith M. Billings, Judge

William A. Thorne Jr., Judge