

IN THE UTAH COURT OF APPEALS

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Express Recovery Services, Inc.,)	MEMORANDUM DECISION
)	(Not For Official Publication)
)	
Plaintiff, Counterclaim)	Case No. 20080312-CA
Defendant, and Appellee,)	
)	
v.)	F I L E D
)	(August 14, 2008)
)	
<u>Bonnie B. Gray</u> and)	2008 UT App 302
Gary Gray,)	
)	
Defendants,)	
Counterclaimants, and)	
Appellant.)	

Third District, West Jordan Department, 050103285
The Honorable Stephen L. Roth

Attorneys: David D. Bennett, Salt Lake City, for Appellant
Spencer C. Siebers, Salt Lake City, for Appellee

Before Judges Bench, Davis, and Orme.

PER CURIAM:

Bonnie B. Gray appeals from the district court's order denying her motions to disallow attorney fees and to alter the district court's December 24, 2007 decision under rule 59 of the Utah Rules of Civil Procedure. This case is before the court on its sua sponte motion for summary disposition based upon lack of jurisdiction.

"An appeal is improper if it is taken from an order or judgment that is not final, see Utah R. App. P. 3(a), unless it fits within an exception to the final judgment rule." Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649. "For an order or judgment to be final, it must dispose of the case as to all the parties, and finally dispose of the subject-matter of the litigation on the merits of the case." Id. (internal quotation marks omitted). Further, "[a] judgment is not final if the trial court has failed to determine whether attorney fees should be awarded." Loffredo v. Holt, 2001 UT 97, ¶ 12, 37 P.3d 1070.

Gray argues that the district court's order is a final appealable order. However, the order, as well as the December 24, 2007 decision, expressly state that an issue remains concerning whether Express Recovery Services, Inc. is entitled to attorney fees and the amount of those fees. Therefore, because the district court has not yet resolved the attorney fees issue, the order from which Gray appeals is not final.

Accordingly, we lack jurisdiction over the appeal and "retain only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). We dismiss the appeal for lack of jurisdiction, without prejudice to a timely appeal after entry of a final judgment.

Russell W. Bench, Judge

James Z. Davis, Judge

Gregory K. Orme, Judge