

IN THE UTAH COURT OF APPEALS

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Joseph R. Fox and Linda A. Fox,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiffs and Appellants,	)	Case No. 20050424-CA
	)	
v.	)	F I L E D
	)	(September 29, 2005)
Brigham Young University,	)	
	)	2005 UT App 411
Defendant and Appellee.	)	

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Fourth District, Provo Department, 040401488  
The Honorable Fred D. Howard

Attorneys: Joseph R. Fox and Linda A. Fox, Spanish Fork,  
Appellants Pro Se  
Thomas W. Seiler, Provo, for Appellee

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Before Judges Bench, Greenwood, and Thorne.

PER CURIAM:

Joseph and Linda Fox (Foxes) appeal an order certified as final for purposes of appeal under rule 54(b) of the Utah Rules of Civil Procedure. The case is before us on a sua sponte motion for summary dismissal for lack of jurisdiction. Because we dismiss the appeal for lack of jurisdiction, we do not consider the parties' cross-motions for disposition.

Foxes appeal the district court's Order Denying Plaintiffs' Motion to File the Plaintiffs' Third Amended Complaint. Foxes filed a complaint seeking damages from Brigham Young University (BYU) as a result of a slip and fall by Linda Fox on a stairway on the BYU campus. In their proposed third amended complaint, they sought to add negligence claims against certain BYU employees. In the order denying the motion to amend, the district court included its reasoning that there was no duty running from these proposed additional defendants to Linda Fox that would support the proposed claim. The court then stated:

This order is a final ruling as to those issues determined herein. There is no just reason for delay. The court makes an express

determination that there is no just reason for delay and makes an express direction for the entry of judgment as set forth in Rule 54(b) of the Utah Rules of Civil Procedure.

Rule 54(b) provides that in cases involving either multiple parties or multiple claims for relief, "the court may 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). "The initial question of whether an order is eligible for certification under rule 54(b), i.e., whether the order is 'final,' is a question of law," which we review for correctness. Kennecott Corp. v. Utah State Tax Comm'n, 814 P.2d 1099, 1100 (Utah 1991). The requirements for proper certification are that (1) "there must be multiple claims for relief or multiple parties to the action;" (2) the order being appealed must be "an order that would be appealable but for the fact that other claims or parties remain in the action;" and (3) the district court "must make a determination that 'there is no just reason for delay' of the appeal." Id. at 1101 (quoting Utah R. App. P. 54(b)). The certified interlocutory order in this case does not satisfy the first nor the second requirement.

Foxes filed this action against BYU as the sole defendant. The district court denied a motion to amend the complaint. If granted, an amendment would have made the underlying case one involving multiple parties and multiple claims. However, when the motion to amend was denied, the case remained a case against a single defendant. Although the district court addressed the potential merit of a proposed negligence claim against additional defendants in explaining its denial of the motion to amend, the court did not, and could not, adjudicate claims that were not actually before it. See Hiltsley v. Ryder, 738 P.2d 1024, 1025 (Utah 1987) (stating the general rules that a trial court may not render judgment in favor of a nonparty and can make a legally binding adjudication only between parties actually joined in the action); see also Butler v. Wilkinson, 740 P.2d 1244, 1263 (Utah 1987) ("A court may not grant relief to a nonparty."). Denial of a motion to amend the complaint to add new claims and new parties to the case is not a ruling on the merits of those unfiled claims or the liability of those nonparties. The order did not resolve any separate claim or the claims against any separate party to the litigation; therefore, it was not eligible for certification under rule 54(b). In addition, the interlocutory order addressing a preliminary, procedural matter would not have been appealable "but for the fact that other claims or parties remain in the action." Kennecott, 814 P.2d at 1101.

In opposing summary dismissal, Foxes assert that the certified order resolved claims against separate parties, i.e., the individual BYU employees. Although the order denying amendment of the complaint contains language considering the potential merit of a proposed amendment to add additional defendants to the case, the amendment was not granted. The BYU employees were not made parties to the case; therefore, the order did not resolve claims against any separate party and could not be certified on that basis.

Because the appeal is taken from an order that was not eligible for certification under rule 54(b), we lack jurisdiction to consider it. In such circumstances, "the remedy is dismissal of the appeal." A.J. Mackay Co. v. Okland Constr. Co, 817 P.2d 323, 325 (Utah 1991). Accordingly, we dismiss the appeal for lack of jurisdiction. Our dismissal is without prejudice to any challenge to the denial of the motion to amend the complaint that may be asserted in an appeal of right from the final judgment in this case.

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Russell W. Bench,  
Associate Presiding Judge

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Pamela T. Greenwood, Judge

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William A. Thorne Jr., Judge