

IN THE UTAH COURT OF APPEALS

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<u>Michael Gray</u> and David Medina,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiffs and Appellant,	)	
	)	Case No. 20050716-CA
v.	)	
	)	F I L E D
Days Inn Central,	)	(June 29, 2006)
	)	
Defendant and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2006 UT App 274</span>

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Third District, Salt Lake Department, 020903595  
The Honorable Joseph C. Fratto Jr.

Attorneys: Michael Gray, Salt Lake City, Appellant Pro Se  
Barbara K. Berrett and Mark D. Taylor, Salt Lake  
City, for Appellee

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Before Judges Davis, McHugh, and Thorne.

PER CURIAM:

Michael Gray appeals from the trial court's grant of summary judgment against him. This case is before this court on remand from the Utah Supreme Court for a determination of jurisdiction.

Although this court issued a decision on November 25, 2005, based on the merits of the case, it appears that we lacked jurisdiction to reach the merits of the appeal. At the time the appeal proceeded, summary judgment had been granted against both Gray and plaintiff David Medina, giving the appearance that the case was final. However, Medina filed a timely motion for new trial, suspending the finality of the summary judgment against him. As a result, there was no final order from which to appeal and this court lacked jurisdiction over the appeal. See Bradbury v. Valencia, 2000 UT 50, ¶8, 5 P.3d 649.

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

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge

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William A. Thorne Jr., Judge