

IN THE UTAH COURT OF APPEALS

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| Michael Vaughn Hansen,        | ) | MEMORANDUM DECISION            |
|                               | ) | (Not For Official Publication) |
| Plaintiff and Appellant,      | ) |                                |
|                               | ) | Case No. 20080414-CA           |
| v.                            | ) |                                |
|                               | ) |                                |
| Jimmy LeRoy Hansen, Estate of | ) | F I L E D                      |
| Raymond M. Hansen, and Estate | ) | (August 28, 2008)              |
| of Louise S. Hansen,          | ) |                                |
|                               | ) | 2008 UT App 321                |
| Defendants and Appellees.     | ) |                                |

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Fifth District, St. George Department, 060502271  
The Honorable James L. Shumate

Attorneys: Christopher W. Edwards, Hurricane, for Appellant  
Matthew T. Graff, Cedar City, and Mark H. Graff, St. George, for Appellees

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Before Judges Thorne, Bench, and Orme.

PER CURIAM:

This case is before the court on Defendants' motion for summary disposition for lack of jurisdiction as untimely. However, we conclude that we lack jurisdiction because no final and appealable judgment has been entered disposing of Defendants' remaining two counterclaims alleging fraud and misrepresentation. Our dismissal is without prejudice to a timely appeal filed after entry of a final judgment disposing of all claims and counterclaims before the court.

On December 10, 2007, the district court entered a document captioned Memorandum Decision on Defendants' Motion for Summary Judgment. The district court granted summary judgment in favor of Defendants on Plaintiff's adverse possession claim and on Defendants' counterclaims for breach of fiduciary duty and breach of contract. The district court also denied, as a matter of law, Defendants' claim for unjust enrichment, concluding that Defendants had an adequate remedy at law. However, the district court identified genuine issues of material fact regarding

Defendants' remaining two counterclaims, which allege fraud and misrepresentation, and reserved those counterclaims for trial. The district court granted damages to Defendants and also ordered immediate distribution of the trust assets. Finally, the court awarded attorney fees and costs to Defendants. Defendants' counsel thereafter filed an affidavit of attorney fees and costs. On March 11, 2008, the district court entered its Order of Judgment, which included the specific award of costs and attorney fees. The judgment incorporated the statement of the "genuine issues of material fact . . . on the remaining causes of action of the Counterclaim." Defendants served a notice of entry of the judgment on Plaintiff, and Plaintiff filed a notice of appeal on March 20, 2008.

Contrary to the representations in Defendants' motion for summary disposition, the December 10, 2007 memorandum decision was not a final, appealable judgment because, in addition to leaving the counterclaims for fraud and misrepresentation unresolved, it did not include attorney fees and costs. 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."). Furthermore, because the March 11, 2008 judgment did not resolve the remaining counterclaims, that judgment also was not final and appealable. A final judgment for purposes of appeal is one that resolves all claims, counterclaims, cross-claims and third-party complaints before the court and fully and finally resolves the case. See Houston v. Intermountain Health Care, 933 P.2d 403, 406 (Utah Ct. App. 1997) ("Generally, judgment is not a final, appealable order if it does not dispose of all the claims in a case, including counterclaims."). The existence of pending counterclaims in this case prevented the judgment from being a final order from which Plaintiff could appeal as a matter of right and requires us to dismiss the appeal on that basis. See A.J. Mackay Co. v. Okland Constr. Co., 817 P.2d 323, 325 (Utah 1991). Even if Defendants elected to abandon the counterclaims for fraud and misrepresentation based upon the relief granted on the remaining counterclaims, this election must have been reflected by an order of the district court dismissing those counterclaims.

Because the March 11, 2008 judgment left counterclaims pending before the district court, it was not a final, appealable judgment. We dismiss the appeal for lack of jurisdiction,

without prejudice to an appeal filed after the entry of a final judgment resolving the remaining claims.

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William A. Thorne Jr.,  
Associate Presiding Judge

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Russell W. Bench, Judge

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Gregory K. Orme, Judge