

IN THE UTAH COURT OF APPEALS

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Steven E. Holloway,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20060355-CA
v.)	
)	
Clifford Johnson Excavations,)	F I L E D
and Clifford Johnson Sr.,)	(July 7, 2006)
)	
Defendants and Appellees.)	2006 UT App 281

Third District, Salt Lake Department, 058904001
The Honorable Joseph C. Fratto

Attorneys: Steven E. Holloway, Draper, Appellant Pro Se
 Douglas G. Mortensen, Salt Lake City, for Appellees

Before Judges Greenwood, Davis, and Thorne.

PER CURIAM:

This case is before the court on a sua sponte motion to summarily dismiss an appeal for lack of jurisdiction because it appeared to have been taken from the judgment of the district court after a trial de novo in a small claims case. See Utah Code Ann. § 78-6-10(2) (Supp. 2005) ("The decision of the trial de novo may not be appealed unless the court rules on the constitutionality of a statute or ordinance."). Based upon a review of the record, we conclude that the district court heard the case as a small claims case, and the appeal should have been considered by the district court through a trial de novo.

Plaintiff Steven Hollloway initiated a small claims action in the Third District Court. The district court docket notes that the small claims case was assigned to a district court judge because Holloway was incarcerated in the Utah State Prison. Although heard by a district court judge, the underlying proceeding was filed in the Small Claims Court and resulted in a Small Claims Judgment entered on March 31, 2006. Utah Code section 78-6-10(1) states:

Either party may appeal the judgment in a small claims action to the district court of

the county by filing a notice of appeal in the original trial court within 30 days of the notice of entry of the judgment. If the judgment in a small claims action is entered by a judge or judge pro tempore of the district court, the notice of appeal shall be filed with the district court.

Utah Code Ann. § 78-6-10(1) (emphasis added). Jurisdiction over an appeal from a small claims judgment lies in the district court, whether the small claims judgment was entered by a district court judge or a judge pro tempore. See id. "The appeal is a trial de novo and shall be tried in accordance with the procedures of small claims actions, except a record of the trial shall be maintained." Id. § 78-6-10(2). The decision following the trial de novo "may not be appealed unless the [district] court rules on the constitutionality of a statute or ordinance." Id.

The motion seeking to appeal the small claims judgment was incorrectly transmitted to this court as an appeal from a district court judgment. Because the motion to appeal was filed within the time for an appeal from the small claims judgment, we construe it as a timely appeal to the district court to obtain a trial de novo. We lack jurisdiction to consider an appeal taken directly from a small claims judgment prior to a trial de novo in district court.

We dismiss the appeal for lack of jurisdiction and remand the case to the district court for further proceedings consistent with this decision.

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

William A. Thorne Jr., Judge