

IN THE UTAH COURT OF APPEALS

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Dorothy Jones,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	Case No. 20090570-CA
)	
v.)	F I L E D
)	(January 22, 2010)
The Arden E. Watson Trust, and)	
Eugene Arden Watson, Trustee)	2010 UT App 11
)	
Defendants and Appellees.)	

First District, Brigham City Department, 060100437
The Honorable Ben H. Hadfield

Attorneys: Charles A. Schultz, Brigham City, for Appellant
Jon J. Bunderson, Brigham City, for Appellees

Before Judges Davis, Thorne, and Voros.

PER CURIAM:

Dorothy Jones appeals the trial court's summary judgment order and subsequent award of attorney fees to Appellees the Arden E. Watson Trust and Eugene Watson (collectively, Watson). This is before the court on Watson's second motion for summary disposition. Although this court has previously withdrawn its own motion for summary disposition and denied Watson's first such motion, the current motion asserts that this court lacks jurisdiction due to an untimely notice of appeal. Jurisdiction may be raised at any time. See Bradbury v. Valencia, 2000 UT 50, ¶ 8, 5 P.3d 649.

Under rule 4 of the Utah Rules of Appellate Procedure, a notice of appeal must be filed within thirty days after the entry of the final order or judgment. See Utah R. App. P. 4(a). Generally, an appeal taken from an order that is not final is improper and this court must dismiss it. See Bradbury, 2000 UT 50, ¶¶ 8-9. An order is final when it disposes of all the issues between the parties. See id. ¶ 10. Where attorney fees are at

issue, a judgment must determine, in addition to the underlying substantive claims, whether attorney fees are awarded and in what amount in order for the judgment to be final. See ProMax Dev. Corp. v. Raile, 2000 UT 4, ¶ 15, 998 P.2d 254.

Jones filed her first notice of appeal on July 10, 2009, seeking to appeal the June 10, 2009 order of the court determining cross-motions for summary judgment. The June 10 order resolved the underlying claims between the parties. However, the litigation regarding whether attorney fees were to be awarded to either party and, if so, what amount, was pending before the trial court. Accordingly, as Jones acknowledged in her docketing statement, the June 10 order was not a final order. See id.

However, under certain circumstances, prematurely filed notices of appeal may be effective after a final order is entered. See Utah R. App. P. 4(c). Pursuant to rule 4(c), a notice of appeal filed after the announcement of a decision but before the entry of the final order "shall be treated as filed after such entry and on the day thereof." Id. This provision preserves certain prematurely filed appeals but is not applicable here based on the sequence of events.

Rule 4(c) applies when a notice of appeal is filed after the announcement of a decision which is then followed by the entry of a final order. Here, the notice of appeal was filed prior to the announcement of the award of attorney fees, the final issue active before the court. The issue of attorney fees was pending at the time the summary judgment order was entered. Briefing had been completed, but the hearing and resolution of the issue was yet to come. The issue remained pending when Jones filed her July 10 notice of appeal. Therefore, the notice of appeal was not filed after the announcement of the decision on attorney fees but before the entry of the final order. Accordingly, by its plain language, rule 4(c) does not apply. As a result, the July 10 notice of appeal had no effect.

Furthermore, no notice of appeal was timely filed after the entry of the final order on August 10. Jones's amended notice of appeal was not filed in the trial court until November 5, 2009--well past the thirty-day period. So neither notice of appeal in this case has perfected jurisdiction. The July 10 notice was premature and the November 5 notice was late.

Because there is no timely notice of appeal filed in this case, this court lacks jurisdiction and must dismiss the appeal. See Bradbury v. Valencia, 2000 UT 50, ¶ 8.¹

Dismissed.

James Z. Davis,
Presiding Judge

William A. Thorne Jr., Judge

J. Frederic Voros Jr., Judge

¹Jones argues in her response that there is no final order because the trial court has not ruled on a motion to strike an affidavit. However, the substantive issues of the case have been resolved and a motion to strike has no jurisdictional effect in these circumstances.