

IN THE UTAH COURT OF APPEALS

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Jack Kotyk and Barbara Kotyk,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiffs and Appellants,)	
)	Case No. 20060086-CA
v.)	
)	
Attorneys Title Guaranty Fund,)	F I L E D
Inc.,)	(May 11, 2006)
)	
Defendant and Appellee.)	2006 UT App 198

Fourth District, Heber Department, 010500456
The Honorable Derek P. Pullan

Attorneys: D. Joseph Cartwright, Salt Lake City, for Appellants

Before Judges Bench, Billings, and Thorne.

PER CURIAM:

Jack and Barbara Kotyk seek to appeal the trial court's ruling granting Attorneys Title Guaranty Fund, Inc.'s (ATGF) motion in limine and determining that one of the Kotyks' claims would be subject to comparative fault principles. This is before the court on its own motion for summary disposition based on the lack of a final, appealable order. Neither party responded to the motion.

In its order dated January 27, 2006, the trial court dismissed one of the Kotyks' claims, denied summary judgment on another of their claims, and determined that comparative fault principles apply in an ongoing claim against ATGF. Pursuant to Utah Rule of Civil Procedure 54(b), the trial court certified the dismissal of one claim as final and immediately appealable. See Utah R. Civ. P. 54(b). The trial court also noted that appellate review of its ruling denying summary judgment and granting ATGF's motion in limine would be helpful.

The Kotyks appealed the order, but did not appeal the dismissal of their claim, which was certified as a final order. Rather, they seek to appeal only the grant of the motion in limine, which determined that comparative fault principles would apply to the Kotyks' ongoing claim. However, the January order

is not a final order for the purposes of appeal regarding the grant of the motion in limine.

The trial court did not certify that portion of the order as final under rule 54(b). Furthermore, it could not do so. For an order to be eligible for certification under rule 54(b), it must wholly dispose of a claim or a party. See Utah R. Civ. P. 54(b); Pate v. Marathon Steel Co., 692 P.2d 765, 768 (Utah 1984). The grant of the motion in limine affects a pending claim but does not wholly dispose of a claim.

An appellate court "does not have jurisdiction over an appeal unless it is taken from a final judgment . . . or qualifies for an exception to the final judgment rule." Loffredo v. Holt, 2001 UT 97, ¶10, 37 P.3d 1070. As noted above, the order appealed does not qualify for certification under rule 54(b). Additionally, the Kotyks have not filed a petition for permission to appeal an interlocutory order pursuant to Utah Rule of Appellate Procedure 5. See Utah R. App. P. 5. Because there is no applicable exception to the final judgment rule and the order granting the motion in limine is not a final order, this court lacks jurisdiction and must dismiss the appeal. See Loffredo, 2001 UT 97 at ¶10.

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

Russell W. Bench,
Presiding Judge

Judith M. Billings, Judge

William A. Thorne Jr., Judge