

IN THE UTAH COURT OF APPEALS

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Tom Lacy,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Plaintiff and Appellant,	)		
	)	Case No. 20090485-CA	
v.	)		
	)	F I L E D	
Ray Taylor; and Taylor	)	(September 17, 2009)	
Design Associates, LLC,	)		
	)	<table border="1"><tr><td>2009 UT App 266</td></tr></table>	2009 UT App 266
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Defendants and Appellees.	)		

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Seventh District, Moab Department, 098700003  
The Honorable Lyle R. Anderson

Attorneys: David O. Drake, Midvale, for Appellant  
Ray Taylor, Castle Valley, Appellee Pro Se

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Before Judges Bench, Orme, and McHugh.

PER CURIAM:

This appeal is before the court on a sua sponte motion for summary dismissal for lack of jurisdiction. The judgment being appealed was entered following a trial de novo of a small claims case that originated in the Grand County Justice Court. Any party may appeal the judgment in a small claims case to the district court. See Utah Code Ann. § 78A-8-106(1) (2008). The appeal is by trial de novo. See id. § 78A-8-106(2). "The decision of the trial de novo may not be appealed unless the court rules on the constitutionality of a statute or ordinance." Id.; see also id. § 78A-5-102(5) ("The district court has appellate jurisdiction over . . . small claims appeals filed pursuant to Section 78A-8-106.").

Here, the district court did not rule on the constitutionality of a statute or ordinance. Thus, we lack jurisdiction to consider an appeal of the decision following the trial de novo. In the docketing statement filed in this court, Plaintiff makes alleged constitutional objections to the manner in which the district court conducted the trial de novo. However, this does not satisfy the specific jurisdictional requirement of section 78A-8-106(2) that a further appeal is allowed only when the district court rules on the

constitutionality of a statute or ordinance. See Kawamoto v. Fratto, 2006 UT 6, ¶ 1, n.1, 994 P.2d 187, (stating that where the district court did not rule on the constitutionality of a statute or ordinance on appeal from a small claims judgment, a party cannot file an appeal and any further review must be by a petition for extraordinary relief).

Defendant seeks an award of damages in the amount of \$3000 against Plaintiff's attorney to compensate him for expenses allegedly incurred in defending against this appeal. Rule 33 of the Utah Rules of Appellate Procedure allows an award of sanctions for a frivolous appeal "which may include single or double costs as defined in Rule 34, and/or reasonable attorney fees, to the prevailing party." Utah R. App. P. 33(a). Although we agree that our lack of jurisdiction over this appeal would have been readily apparent to Plaintiff's counsel upon a review of Utah Code section 78A-8-106(2), there is no factual support for the requested sanctions. Defendant states that he consulted with an attorney about this case, but no attorney appeared on his behalf in this court (or in the district court). Thus, there is no basis for an award of attorney fees reasonably incurred by Defendant. Defendant's costs would be minimal, and he did not incur a filing or docketing fee in this court. Accordingly, we conclude that there is no factual support for an award of damages in the amount claimed by Defendant, although he may recover any costs as the prevailing party, see Utah R. App. P. 34.

Accordingly, we dismiss this appeal for lack of jurisdiction and deny Defendant's request for sanctions.

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Russell W. Bench, Judge

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Gregory K. Orme, Judge

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Carolyn B. McHugh, Judge