IN THE UTAH COURT OF APPEALS

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| Carol Ann Lavoie nka Carol Ann Huebner, | ) | MEMORANDUM DECISION (Not For Official Publication) |
| Petitioner and Appellee, | ) | Case No. 20100050-CA |
| v. | ) | F I L E D (December 23, 2010) |
| Derrick Robert Lavoie, | ) | 2010 UT App 383 |
| Respondent and Appellant. | ) | |

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Fifth District, St. George Department, 074500609
The Honorable Eric A. Ludlow

Attorneys: Michael R. Shaw, St. George, for Appellant
Brent M. Brindley, St. George, for Appellee

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Before Judges Thorne, Voros, and Christiansen.

PER CURIAM:

Respondent Derrick Robert Lavoie appeals the denial of his motion to dismiss and strike all orders entered in the underlying proceeding for lack of subject matter jurisdiction. Because the order left the case pending in the district court, it was not a final appealable order, and we lack jurisdiction to consider this appeal.

The parties were divorced in South Dakota in 2000. Petitioner Carol Ann Huebner moved to Utah with the parties' child in 2005. Lavoie moved to California. In 2007, Huebner filed the South Dakota divorce decree in Utah. Huebner then moved to transfer jurisdiction from South Dakota to Utah pursuant to the Utah Uniform Child Custody Jurisdiction and Enforcement Act, see Utah Code Ann. §§ 78B-13-101 to -318 (2008). Lavoie did not oppose the motion. The Utah and South Dakota courts agreed that jurisdiction should be transferred to the Fifth District Court for Washington County, Utah. In 2008, Huebner successfully

petitioned to modify the child support provisions of the decree. The Utah district court entered a judgment awarding past due child support and an order both retrospectively and prospectively modifying child support. Lavoie filed a timely motion for new trial in which he stated that he did not dispute the Utah district court's authority to modify the South Dakota child support order prospectively, but disputed the retroactive modification. A July 2009 order denied the motion for new trial, but granted relief from much of the retroactive child support award. In August 2009, Lavoie filed his own petition to modify child support in Utah.

In October 2009, while Lavoie's own petition to modify was pending, he filed a "motion to dismiss and strike underlying proceedings for lack of jurisdiction," claiming that the Utah district court had lacked jurisdiction to enforce or modify the South Dakota decree from the inception of the Utah proceedings. Lavoie's motion was premised upon provisions of the Utah Uniform Interstate Family Support Act, see Utah Code Ann. §§ 78B-14-609 to -615, which he claimed exclusively governed the modification of the South Dakota child support award. The Utah district court denied the motion to dismiss, and this appeal followed. No further action has been taken on LaVoie's pending petition to modify.

Because a district court has continuing jurisdiction in divorce proceedings under Utah Code section 30-3-5, "several orders in a single divorce proceeding may be final and appealable." Copier v. Copier, 939 P.2d 202, 203 (Utah Ct. App. 1997). Nevertheless, to be a final order in the divorce context, the order "must resolve the controversy between the parties." Id. at 204. The Utah district court did not resolve Lavoie's petition to modify child support prior to his filing of the notice of appeal from the ruling denying his motion to dismiss the proceedings. Because the order being appealed did not resolve the controversy between the parties and actually left the case pending on Lavoie's petition to modify, it was not a final appealable order. Once a court has determined that it lacks jurisdiction, it "retains only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). Accordingly, we dismiss the appeal without

prejudice to a timely appeal filed after the entry of a final appealable order.[1]

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William A. Thorne Jr., Judge

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J. Frederic Voros Jr., Judge

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Michele M. Christiansen, Judge

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[1]The December 11, 2009 ruling was interlocutory and could be appealed only if Lavoie obtained permission to pursue an interlocutory appeal pursuant to rule 5 of the Utah Rules of Appellate Procedure. Utah R. App. P. 5. We express no opinion whether the December 11, 2009 ruling satisfied the requirements of Houghton v. Department of Health, 2008 UT 86, 206 P.3d 287, in which the Utah Supreme Court applied rule 7(f)(2) of the Utah Rules of Civil Procedure to interlocutory orders for purposes of determining when the time to petition for permission to file an interlocutory appeal commences to run. See id. ¶ 11.