

IN THE UTAH COURT OF APPEALS

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| Korilee Lilly, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Petitioner and Appellee, |) | |
| |) | Case No. 20090047-CA |
| v. |) | |
| |) | F I L E D |
| |) | (May 14, 2009) |
| Aaron Lilly, |) | |
| |) | 2009 UT App 132 |
| Respondent and Appellant. |) | |

Third District, Salt Lake Department, 074904948
The Honorable Glenn K. Iwasaki

Attorneys: Mark W. Wiser, Salt Lake City, for Appellant
 David R. Blaisdell, Salt Lake City, for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Aaron Lilly (Husband) appeals the trial court's order denying his motion to determine residency and choice of law. This is before the court on its own motion for summary disposition based on lack of jurisdiction. After review of the record, we conclude that there is no final appealable order before us.

Husband filed a petition in the Utah district court to modify a California child support order. Korilee Lilly (Wife) opposed the motion and sought to dismiss the petition for lack of jurisdiction. After a hearing, an order was entered stating that Utah lacked jurisdiction to modify the California order but declining to dismiss the petition to modify. Instead, Husband was granted leave to file an amended petition.

Husband filed an amended petition to modify support. Shortly thereafter, he filed a motion to determine residency and choice of law, seeking a determination that he was a Utah resident. The motion was heard before the commissioner. The commissioner noted that no new facts were established that would change the prior finding and recommended that the trial court find no jurisdiction and deny the motion. The trial court entered an order in October 2008, which denied Husband's motion

and concluded that Utah lacked jurisdiction to modify the California child support order. After various postjudgment motions were resolved, Husband filed this appeal.

Generally, appeals may be taken only from final orders or judgments. See Utah R. App. P. 3(a). "An appeal is improper if it is taken from an order or judgment that is not final." Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649. To be final, the trial court's order or judgment must end the controversy between the parties. See id.

Here, although the trial court concluded in an order on an interlocutory motion that it lacked jurisdiction to modify the California support order, the trial court did not dismiss the petition to modify. The order ruled only on the motion to determine residency. Accordingly, the petition to modify remains pending before the trial court. Thus, there is no final order ending the controversy between the parties. As a result, this court lacks jurisdiction and must dismiss the appeal.¹ See id. ¶ 8.

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

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge

¹We note that a timely appeal of a final order dismissing the petition to modify would permit Husband to challenge the finding of no jurisdiction as an intermediate order. See Zions First Nat'l. Bank N.A. v. Rocky Mountain Irrigation, Inc., 931 P.2d 142, 144 (Utah 1997).