

IN THE UTAH COURT OF APPEALS

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<u>Diane Martineau</u> and Eric	)	MEMORANDUM DECISION
Martineau,	)	(Not For Official Publication)
	)	
Plaintiffs and Appellant,	)	Case No. 20050446-CA
	)	
v.	)	F I L E D
	)	(July 14, 2005)
Beckie Herring,	)	
	)	2005 UT App 321
Defendant and Appellee.	)	

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Fourth District, Orem Department, 048201218  
The Honorable James R. Taylor

Attorneys: Diane Martineau, Pleasant Grove, Appellant Pro Se  
Ronald D. Wilkinson and Bryce B. Higbee, Orem, for  
Appellee

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Before Judges Davis, Jackson, and Orme.

PER CURIAM:

Diane Martineau seeks to appeal an order denying her motion to disqualify the judge who presided over a small claims trial de novo. This is before the court on its own motion for summary disposition based on lack of jurisdiction.

An appeal from a small claims action is generally limited to a trial de novo in district court. See Utah Code Ann. § 78-6-10(2) (2002 & Supp. 2004). "The decision of the trial de novo may not be appealed unless the court rules on the constitutionality of a statute or ordinance." Id. The trial de novo "shall be tried in accordance with the procedures of small claims actions." Id.

The trial de novo in this matter satisfied the appeal process pursuant to statute. Because the court did not rule on the constitutionality of a statute or ordinance, its decision is final with no further appeal. See id. This court lacks jurisdiction to consider an appeal from a small claims action. See id.

However, Martineau filed two post-trial motions under the Utah Rules of Civil Procedure, including the motion to disqualify. The motions have no application in a small claims procedure and are barred under the rules. Utah Rule of Civil Procedure 81 provides "[t]hese rules shall not apply to small [claims] proceedings except as expressly incorporated in the Small Claims Rules." Utah R. Civ. P. 81(c). The only rules of civil procedure incorporated into small claims procedures are those regarding subpoenas and collections of judgments. There is no provision for moving for a new trial or disqualifying a judge in the small claims rules.

Martineau essentially attempts to circumvent the limitation on appeals from small claims proceedings by styling her appeal as being from the denial of post-trial motions rather than from the de novo judgment. These efforts do not confer jurisdiction on this court for proceedings originating in the small claims arena. Accordingly, this appeal is dismissed.

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James Z. Davis, Judge

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Norman H. Jackson, Judge

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Gregory K. Orme, Judge