

IN THE UTAH COURT OF APPEALS

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Orson W. McKinney and Sheila)	MEMORANDUM DECISION
C. McKinney,)	(Not For Official Publication)
)	
Plaintiffs and Appellees,)	Case No. 20070233-CA
)	
v.)	F I L E D
)	(February 28, 2008)
Steve Winters and Jed Winters,)	
)	2008 UT App 63
Defendants and Appellants.)	

Fourth District, Provo Department, 060400010
The Honorable Fred D. Howard

Attorneys: Vincent C. Rampton and Candice Pitcher, Salt Lake City, for Appellants
Sara E. Bouley and Bradley L. Tilt, Salt Lake City, for Appellees

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Steve Winters and Jed Winters (the Winterses) appeal from a judgment that the district court entered on February 12, 2007. This matter is before the court on Orson W. McKinney and Sheila C. McKinney's (the McKinneys) motion for summary disposition. The McKinneys allege that the Winterses did not timely file their notice of appeal within ten days of the entry of the judgment. See Utah R. App. P. 4(a) (requiring an appellant to file a notice of appeal within ten days of a judgment in an unlawful detainer action). Alternatively, the McKinneys allege that the case should be dismissed because there is no final appealable order. We agree with the McKinneys that there is no final appealable order.

This court does not have jurisdiction to consider an appeal unless it is taken from a final judgment or order, see id. R. 3(a), or qualifies for an exception to the final judgment rule. See Loffredo v. Holt, 2001 UT 97, ¶¶ 10, 15, 37 P.3d 1070. An order is final only if it disposes of the case as to all parties and "finally dispose[s] of the subject-matter of the litigation

on the merits of the case." Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649 (citation and internal quotation marks omitted).

The order appealed from is not a final appealable order because it does not dispose of all issues in the litigation. Specifically, the record demonstrates that the Winterses' complaint alleged two causes of action: unlawful detainer and breach of contract. The judgment entered on February 12, 2007 only encompasses the unlawful detainer cause of action. The record indicates that while the parties were resolving the language of the judgment on the unlawful detainer cause of action, a motion for summary judgment was filed to resolve the breach of contract issue. Oral argument was scheduled, but was later cancelled. There is no order in the record resolving the breach of contract claim. Accordingly, the judgment appealed from did not finally dispose of the subject matter of the litigation. The district court did not certify the judgment as final nor has either party demonstrated that an exception to the final judgment rule applies. Therefore, this court lacks jurisdiction to hear this appeal. When this court lacks jurisdiction, it has only the power to dismiss the appeal. See id. ¶ 11.

The appeal is dismissed without prejudice.¹

James Z. Davis, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge

1. Because this court does not have jurisdiction due to the lack of a final appealable order, the court expresses no opinion on whether the McKinneys are entitled to attorney fees under the unlawful detainer statute in defending this appeal.