IN THE UTAH COURT OF APPEALS

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Jeffrey Vernon Merkey,	)	MEMORANDUM DECISION (Not For Official Publication)
Plaintiff and Appellant,	)	Case No. 20090094-CA
v.	)	F I L E D (May 14, 2009)
Solera Networks, Inc.,	)	2009 UT App 130
Defendant and Appellee.	)	

Fourth District, Provo Department, 080403096
The Honorable Darold J. McDade

Attorneys: Jeffrey Vernon Merkey, Lindon, Appellant Pro Se
Anthony C. Kaye, Jason D. Boren, and Matthew L. Moncur, Salt Lake City, for Appellee

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Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Appellee Solera Networks, Inc. (Solera) moves to dismiss this appeal on grounds that it is not taken from a final judgment. We grant the motion and dismiss this appeal without prejudice.

Appellant Jeffrey Vernon Merkey's response refers to three actions filed in district court, but only the consolidated cases of Merkey v. Solera Networks, Inc., No. 080403096, and Solera Networks, Inc. v. Merkey, No. 080403545, are relevant to this appeal. In case number 080403096, Merkey sued Solera for breach of contract, tortious interference with a contractual relationship, defamation/false light invasion of privacy, and slander of title, all of which related to a prelitigation "cease and desist" letter sent by Solera to a business associate of Merkey. Solera filed case number 080403545 as an action for breach of Merkey's employment contract, which contained noncompetition and nondisclosure clauses. Solera contends that Merkey, a former employee, revealed confidential trade secrets and engaged in competition that was precluded by his employment contract.

Solera moved to dismiss Merkey's complaint under rule 12(b)(6) of the Utah Rules of Civil Procedure for failure to state a claim. Prior to ruling on the motion to dismiss, the district court consolidated the two cases involving Merkey and Solera "for all purposes." The district court subsequently granted the motion to dismiss Merkey's complaint, and the case is proceeding in district court on Solera's complaint against Merkey and other named parties. Merkey filed a direct appeal from the order dismissing his complaint. Solera moves to dismiss this appeal because claims in the consolidated case remain pending before the district court.

The order dismissing Merkey's complaint is not final and appealable because it does not fully resolve the case pending in the district court. A final judgment for purposes of appeal is one that resolves all claims, counterclaims, cross-claims, and third-party claims before the court and fully and finally resolves the case. See Houston v. Intermountain Health Care, 933 P.2d 403, 406 (Utah Ct. App. 1997) ("Generally, a judgment is not a final, appealable order if it does not dispose of all the claims in a case, including counterclaims."). The district court's order of consolidation was clear in stating that the two cases were consolidated for all purposes. In Steck v. Aagaire, 789 P.2d 708 (Utah 1990) (per curiam), the Utah Supreme Court held that an order disposing of one of three consolidated cases was not final and appealable because it did "not dispose of all claims of all parties in the consolidated case." Id. at 709. In Steck, the supreme court adopted the approach that an appeal in a consolidated case is permitted "only when there is a final judgment that resolves all of the consolidated actions unless a 54(b) certification is entered by the district court." Id. In this case, the district court did not certify the order dismissing Merkey's complaint as final for purposes of appeal pursuant to rule 54(b). See generally Utah R. Civ. P. 54(b). In addition, Merkey did not file a timely petition for permission to appeal from the interlocutory order dismissing his complaint, see generally Utah R. App. P. 5, and it follows that we did not grant permission to appeal.

Citing federal case law, Merkey asserts that the consolidated cases retained separate existence for purposes of appeal. Steck rejects this assertion. See 789 P.2d at 709. Furthermore, Utah has consistently refused to adopt the federal collateral order doctrine as a basis for jurisdiction over an appeal of an interlocutory order. See Mecham v. Frazier, 2008 UT 60, ¶ 12, 193 P.3d 630; Merit Elec. v. Dept. of Commerce, 902 P.2d 151, 153 (Utah Ct. App. 1995).

A court's first inquiry is always to determine whether the court has jurisdiction over the matter before it. See Varian-

Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). "When a matter is outside the court's jurisdiction, it retains only the authority to dismiss the action." Id. Accordingly, we dismiss the appeal, without prejudice to a timely appeal initiated after the entry of a final appealable judgment.

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Russell W. Bench, Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge