

IN THE UTAH COURT OF APPEALS

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Christopher M. Nemelka,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellant,	)	
	)	Case No. 20070248-CA
v.	)	
	)	
<u>State of Utah, Third District</u>	)	F I L E D
<u>Court, Judge Denise P.</u>	)	(May 10, 2007)
<u>Lindberg</u> , Valley Mental Health,	)	
Kathy Reimherr, Dr. Nancy Cohn,	)	2007 UT App 164
and John & Jane Does 1-10,	)	
inclusive,	)	
	)	
Defendants and Appellees.	)	

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Third District, Salt Lake Department, 070901105  
The Honorable John Paul Kennedy

Attorneys: Christopher M. Nemelka, Sandy, Appellant Pro Se  
Mark L. Shurtleff and Peggy E. Stone, Salt Lake City,  
for Appellees

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Before Judges Greenwood, Billings, and Orme.

PER CURIAM:

Christopher M. Nemelka appeals a minute entry granting Appellees' motion to dismiss. This matter is before the court on the State's motion to dismiss for lack of jurisdiction pursuant to rule 10 of the Utah Rules of Appellate Procedure. The State asserts that summary dismissal is appropriate because the trial court has not entered a final, appealable order. See Utah R. App. P. 3(a).

Nemelka filed his notice of appeal in this matter on March 19, 2007. However, the record does not reflect that an order granting Appellees' motion to dismiss has been entered to date. Moreover, Nemelka still has claims pending against the remaining defendants in the underlying action.

An appeal of right may be taken only from a final judgment that "ends the controversy between the parties litigant." Bradbury v. Valencia, 2000 UT 50, ¶9, 5 P.3d 649. "For an order

or judgment to be final, it 'must dispose of the case as to all the parties and finally dispose of the subject-matter of the litigation on the merits of the case.'" Id. (quoting Kennedy v. New Era Indus., Inc., 600 P.2d 534, 536 (Utah 1979)). The order that Nemelka seeks to appeal is not a final judgment because it did not fully dispose of the case. Consequently, there is not a final, appealable order because the trial court's decision does not dispose of all claims of all parties. See id. at ¶10.

Accordingly, we have no alternative but to dismiss the appeal for lack of jurisdiction. This appeal is dismissed without prejudice to the timely filing of a notice of appeal from a final order, or a properly certified order pursuant to rule 54(b) of the Utah Rules of Civil Procedure.

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Pamela T. Greenwood,  
Associate Presiding Judge

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Judith M. Billings, Judge

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Gregory K. Orme, Judge