

IN THE UTAH COURT OF APPEALS

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Pioneer Builders Company of Nevada, Inc., aka Pioneer Builders of Nevada aka Pioneer Builders,)	MEMORANDUM DECISION
)	(Not For Official Publication)
)	Case No. 20090183-CA
)	
Plaintiff and Appellee,)	F I L E D
)	(June 11, 2009)
v.)	
)	2009 UT App 158
<u>Boyd Smith and Carolyn Smith;</u>)	
K D A Corporation aka KDA Corporation aka K.D.A. Corporation aka K.D.A. Corporation, Inc.; et al.,)	
)	
Defendants and Appellants.)	

First District, Logan Department, 030100421
The Honorable Ben H. Hadfield

Attorneys: Brent K. Wamsley, Salt Lake City, for Appellants
Robert J. Dale and Bradley L. Tilt, Salt Lake City,
for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Boyd and Carolyn Smith appeal from a judgment entered on January 20, 2009. This matter is before the court on Pioneer Builders Company of Nevada, Inc.'s motion for summary disposition based upon lack of jurisdiction due to the absence of a final, appealable order.

This court does not have jurisdiction to consider an appeal unless it is taken from a final judgment or order, or otherwise qualifies for an exception to the final judgment rule. See Loffredo v. Holt, 2001 UT 97, ¶¶ 10, 15, 37 P.3d 1070; see also Utah R. App. P. 3(a). 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 (internal quotation marks omitted).

The Smiths purport to appeal a judgment entered by the court on January 20, 2009.¹ However, this judgment did not finally resolve the subject matter of the litigation on the merits. The judgment specifically sets forth several other issues that remain to be resolved by the district court. Further, the district court did not certify this judgment as final in accordance with rule 54(b) of the Utah Rules of Civil Procedure. Therefore, the judgment was not a final, appealable order, and we lack jurisdiction over this matter. See id. When this court lacks jurisdiction, it must dismiss the appeal. See Loffredo, 2001 UT 97, ¶ 11.

The appeal is dismissed without prejudice to the filing of a timely appeal after the district court enters a final, appealable order.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge

¹In their response to the motion for summary disposition, the Smiths acknowledge that the judgment they sought to appeal is not final.