

IN THE UTAH COURT OF APPEALS

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Wayne R.N. Searle,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellant,)		
)	Case No. 20061127-CA	
v.)		
)	F I L E D	
Michelle Martin,)	(February 23, 2007)	
)		
Defendant and Appellee.)	<table border="1"><tr><td>2007 UT App 59</td></tr></table>	2007 UT App 59
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Third District, Silver Summit Department, 990600141
The Honorable Bruce C. Lubeck

Attorneys: Wayne R.N. Searle, Midway, Appellant Pro Se
George L. Arnold, Evanston, Wyoming, for Appellee

Before Judges Bench, Orme, and Thorne.

PER CURIAM:

Wayne R.N. Searle appeals the dismissal of his complaint for failure to prosecute. This is before the court on its own motion for summary disposition for lack of jurisdiction due to the absence of a final order. Appellee Michelle Martin responded. Searle did not.

Searle filed a notice of appeal from the trial court's order dismissing his claim with prejudice. The order did not, however, dismiss Martin's counterclaim and it remains pending. "An appeal is improper if it is taken from an order or judgment that is not final." Bradbury v. Valencia, 2000 UT 50, ¶9, 5 P.3d 649. "To be final, the trial court's order or judgment must dispose of all parties and claims to an action." Id. at ¶10. An order disposing of a plaintiff's claims is not a final order for purposes of appeal where a counterclaim remains pending before the trial court. See id. at ¶11.

Because Appellee's counterclaim remains pending before the trial court, Searle has not taken an appeal from a final, appealable order. Where an appeal is not properly taken, "this court lacks jurisdiction and we must dismiss." Id. at ¶8.

Accordingly, this appeal is dismissed without prejudice to the filing of a timely appeal after entry of a final order.

Russell W. Bench,
Presiding Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge