

IN THE UTAH COURT OF APPEALS

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Vernal Theaters, Inc., a Utah	)	MEMORANDUM DECISION
corporation; Showalter Motor	)	(Not For Official Publication)
Company, Inc., a Utah	)	
corporation; and Star	)	Case No. 20050768-CA
Investment Company, L.L.C.,	)	
	)	
Plaintiffs and Appellants,	)	F I L E D
	)	(May 25, 2006)
v.	)	
	)	2006 UT App 210
	)	
Vernal City, a political	)	
subdivision of the State of	)	
Utah; William Kremin; Bert	)	
Clerk; Joann Cowan; Allan	)	
Mashburn; John Parker; Cal Dee	)	
Reynolds; and Ken Bassett,	)	
	)	
Defendants and Appellees.	)	

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Eighth District, Vernal Department, 040800505  
The Honorable Bruce K. Halliday

Attorneys: Kevin R. Watkins, Salt Lake City, for Appellants  
Dennis L. Judd and Rachelle L. Palmer, Vernal, for  
Appellees

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Before Judges Billings, Orme, and Thorne.

PER CURIAM:

Vernal Theaters, Inc., Showalter Motor Company, Inc., and Star Investment Company, L.L.C., appeal from the trial court's ruling signed on July 28, 2005. This is before the court on its own motion for summary dismissal based on lack of jurisdiction due to the absence of a final order.

Appellate courts "[do] not have jurisdiction over an appeal unless it is taken from a final judgment, Utah R. App. P. 3(a), or qualifies for an exception to the final judgment rule." Loffredo v. Holt, 2001 UT 97, ¶10, 37 P.3d 1070. A signed minute entry or memorandum decision may be final for purposes of appeal. See State v. Leatherbury, 2003 UT 2, ¶9, 65 P.3d 1180. However,

such an order "will not be considered a final order where its language indicates that it is not intended as final." Id. "Where further action is contemplated by the express language of the order, it cannot be a final determination susceptible of enforcement." Id.

Here, the trial court's ruling directed counsel for appellees to prepare a final order--an act that, to date, has not been performed.<sup>1</sup> The express language of the trial court's decision contemplates further action. As a result, the decision is not a final order for purposes of appeal. Absent a final order, this court lacks jurisdiction and must dismiss the appeal. See Loffredo, 2001 UT 97 at ¶11.

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

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Judith M. Billings, Judge

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge

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1. Although it is unfortunate that appellees did not file the appropriate order, appellants' counsel was not between a "rock and a hard place" as alleged. As set forth herein, the time to file a notice of appeal did not begin to run, and appellants' citation to Code v. Utah Department of Health, 2006 UT App 113 (mem.) is inapposite, as the trial court's decision in that case did not include an instruction to prepare an order. See id.