

IN THE UTAH COURT OF APPEALS

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Gloria Sonntag, Joanne	)	MEMORANDUM DECISION
Tinsley, Bernadine Hiser, and	)	(Not For Official Publication)
Karen Bacon,	)	
	)	Case No. 20070113-CA
Plaintiffs and Appellees,	)	
	)	
v.	)	F I L E D
	)	(May 3, 2007)
	)	
William A. Ward,	)	2007 UT App 151
	)	
Defendant and Appellant.	)	

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Second District, Ogden Department, 030907005  
The Honorable W. Brent West

Attorneys: William A. Ward, Ogden, Appellant Pro Se  
E. Troy Blanchard and Michael F. Leavitt, St. George,  
for Appellees

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Before Judges Greenwood, Billings and Orme.

PER CURIAM:

William A. Ward appeals the district court's order granting Appellee's motion for leave to file an amended complaint and denying Ward's motion to dismiss. This case is before the court on its sua sponte motion for summary disposition based upon lack of jurisdiction.

"An appeal is improper if it is taken from an order or judgment that is not final, see Utah R. App. P. 3(a), unless it fits within an exception to the final judgment rule." 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. (quotations and citation omitted). "In other words, a judgment is final when it ends the controversy between the parties litigant." Id. (quotations and citation omitted).

Ward purports to appeal from the decision of the district court granting Appellees' motion to amend their complaint and denying his motion to dismiss the case. It is clear that the

district court's decision did not resolve the controversy between the parties or dispose of the subject matter of the case. In fact, the order had quite the opposite effect. It granted Appellees' motion to amend their complaint, thereby allowing a continuation of the litigation.<sup>1</sup>

Accordingly, we lack jurisdiction over the appeal and "retain only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). We dismiss the appeal for lack of jurisdiction, without prejudice to a timely appeal after entry of a final judgment.<sup>2</sup>

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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

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<sup>1</sup>We further note that the decision was also not final because the decision required further action by the parties, i.e., the preparation of an order consistent with the decision of the court. See State v. Leatherbury, 2003 UT 2, ¶9, 65 P.3d 1180 ("[W]here further action is contemplated by the express language of the order, it cannot be a final determination susceptible of enforcement.").

<sup>2</sup> In their memorandum in support of the court's sua sponte motion for summary disposition, Appellees request attorney fees associated with this appeal. The request is denied.