

IN THE UTAH COURT OF APPEALS

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James B. White,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellant,	)	
	)	Case No. 20090408-CA
v.	)	
	)	
<u>Judge Ann Boyden; Ann Rozycki;</u>	)	F I L E D
and Suzan Denhardt,	)	(July 30, 2009)
	)	
Defendants and <u>Appellees.</u>	)	2009 UT App 209

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Fourth District, Provo Department, 098401260  
The Honorable Gary D. Stott

Attorneys: James B. White, Herriman, Appellant Pro Se  
Mark L. Shurtleff and Peggy E. Stone, Salt Lake City,  
for Appellees

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Before Judges Greenwood, Bench, and Davis.

PER CURIAM:

James B. White appeals the district court's order dismissing his de novo appeal from a matter originally filed in the small claims court. This matter is before us on a motion for summary disposition based upon lack of jurisdiction.

Utah Code section 78A-8-106 governs appeals from small claims courts. See Utah Code Ann. § 78A-8-106 (2008). A party may appeal the decision of a small claims court to the district court for a trial de novo. See id. § 78A-8-106(1). Utah Code section 78A-8-106(2) provides that "the decision of the trial de novo may not be appealed unless the [district] court rules on the constitutionality of a statute or ordinance." Id. § 78A-8-106(2).

The record demonstrates that, on de novo appeal, the district court did not rule on the constitutionality of a statute or ordinance. Rather, the district court determined that White's action against Defendants, arising from issues related to his criminal proceeding, was not properly before the small claims court. The district court also determined that any issues

stemming from White's criminal proceeding could be addressed on direct appeal.

Because the district court did not rule on the constitutionality of a statute or ordinance, this court lacks jurisdiction to hear the appeal. See id. When a court lacks jurisdiction, it "retains only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989).

Accordingly, we dismiss the appeal.

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Pamela T. Greenwood,  
Presiding Judge

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Russell W. Bench, Judge

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James Z. Davis, Judge