

IN THE UTAH COURT OF APPEALS

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Barbara Schwarz,
Plaintiff and Appellant,

v.

State of Utah, State Records Committee, Executive Secretary Eric A. Stene; Department of Human Services, Executive Director Robin Arnold-Williams; and Valley Mental Health, Executive Director David E. Dangerfield,

Defendants and Appellees.

MEMORANDUM DECISION
(Not For Official Publication)

Case No. 20030875-CA

F I L E D
(September 30, 2004)

2004 UT App 342

Third District, Salt Lake Department

The Honorable Joseph C. Fratto Jr.

Attorneys: Barbara Schwarz, Salt Lake City, Appellant Pro Se

Mark L. Shurtleff, Mark E. Burns, and Joel A. Ferre, Salt Lake City,
for State of Utah Appellees

Before Judges Billings, Bench, and Greenwood.

PER CURIAM:

Barbara Schwarz appeals a September 22, 2004 order, which granted the motions to dismiss filed by the State of Utah, State Records Committee, and its Executive Secretary Eric A. Stene, and by the State

of Utah, Department of Human Services, and its Executive Director Robin Arnold-Williams (collectively "State of Utah Appellees"). We dismiss the appeal for lack of jurisdiction because it was not taken from a final appealable judgment.

The order appealed is not a final and appealable judgment because the case remains pending in the district court against the remaining defendants, Valley Mental Health and its Executive Director David E. Dangerfield. These Defendants filed an answer to the complaint, but did not file a motion to dismiss and were not included in the motions to dismiss filed by the State of Utah Appellees. In addition, the motions to dismiss filed by the State of Utah Appellees were based upon mootness or issue preclusion as a result of the separate administrative proceedings that were necessarily limited to documents maintained by the State of Utah Appellees. Only those motions were submitted to the district court for decision. Accordingly, only the State of Utah Appellees were dismissed by the September 22, 2003 order, and the case was not dismissed as to Valley Mental Health and Craig Dangerfield.

An appeal of right may be taken from a final judgment. See Utah R. App. P. 3 (stating that an appeal may be taken from a district court from all final orders and judgment). "For a judgment or order to be final, it must dispose of the case as to all parties, and finally dispose of the subject-matter of the litigation on the merits of the case." In re S. Am. Ins. Co., 930 P.2d 276, 278 (Utah Ct. App. 1996). "In other words, a judgment is final when it ends the controversy between the parties litigant." Id. Exceptions to the final judgment rule exist where the appellate court has granted permission to appeal from an interlocutory order on a timely petition filed under rule 5 of the Utah Rules of Appellate Procedure, or where the order has been properly certified by the district court as final for purposes of appeal under rule 54(b) of the Utah Rules of Civil Procedure. Neither exception applies to this case.

Having concluded that we lack jurisdiction over this untimely appeal, we retain "only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1998). Accordingly, we dismiss the appeal for lack of jurisdiction, without prejudice to a timely appeal taken after the entry of a final, appealable judgment.

Judith M. Billings,

Presiding Judge

Russell W. Bench,

Associate Presiding Judge

Pamela T. Greenwood, Judge