

APR 02 2020

IN THE UTAH COURT OF APPEALS

THOMAS D. WILLIAMSON, ET AL, Appellants, <i>v.</i> R. TODD NIELSON, ET AL, Appellees.	ORDER OF SUMMARY DISMISSAL Case No. 20200093-CA
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Before Judges Hagen, Appleby, and Orme.

Appellants seeks to appeal the district court's order granting Appellees' motion for summary judgment. The district court issued an order certifying the order as final pursuant to rule 54(b) of the Utah Rules of Civil Procedure. This matter is before the court on its own motion for summary disposition based upon lack of jurisdiction due to the absence of a final, appealable order or an order properly certified pursuant to rule 54(b).

For an order to be properly certified as final under rule 54(b), three requirements must be met. *See Copper Hills Custom Homes, LLC v. Countrywide Bank, FSB*, 2018 UT 56, ¶ 16, 428 P.3d 1133. "There must be multiple claims for relief or multiple parties to the action; . . . the judgment appealed from must have been entered on an order that would be appealable but for the fact that other claims or parties remain in the action; . . . [and the district] court, in its discretion, must make an express determination that there is no just reason for delay." *Id.* (quotation simplified). In regard to the second criterion, i.e., the appealability of the order, the Utah Supreme Court has instructed that district courts must "enter findings supporting the conclusion that the certified orders are final," and "detail the lack of factual overlap between the certified and remaining claims." *Id.* ¶ 21 (quotation simplified). These findings are important in assessing the propriety of the rule 54(b) certification because of the need to determine the potential res judicata effect of an appeal on the issues remaining before the district court. *Kennecott Corp. v. Utah State Tax Comm'n*, 814 P.2d 1099, 1104 (Utah 1991). "Where the facts are sufficiently similar to constitute res judicata on the remaining issues, 54(b) certification is generally precluded." *Id.* at 1104–05. Further, the district court must also set forth its rationale as to why there is no just reason for delay. *See Copper Hills*, 2018 UT 56, ¶ 21.

Here, the district court's certification order does not comply with the standard set forth by the Utah Supreme Court in two respects. First, the order does not include detailed findings concerning the lack of factual overlap between the certified claims and the remaining claims. Second, the order fails to set forth the rationale as to why there is no just reason for delay. AS the court stated in *Copper Hills Custom Homes* "it is self-evident that we cannot review the district court's analysis in this regard if analysis is not provided." *Id.* ¶ 28. Therefore, the certification order in this case is deficient.

IT IS HEREBY ORDERED that the appeal is dismissed without prejudice to the filing of a timely appeal should the district court enter a proper rule 54(b) certification or upon the entry of a final, appealable order.

Dated this 2nd day of April, 2020.

FOR THE COURT:



Diana Hagen, Judge

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of April, 2020, a true and correct copy of the attached OPINION was sent by standard or electronic mail to be delivered to:

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APPEALS CASE NO.: 20200093-CA