

MAY 28 2020

IN THE UTAH COURT OF APPEALS

EMIGRATION CANYON HOME OWNERS
ASSOCIATION,
Appellant,
v.
KENT L. JONES AND EMIGRATION
IMPROVEMENT DISTRICT,
Appellees.

ORDER

Case No. 20200295-CA

Before Judges Orme, Christiansen Forster, and Harris.

This case is before the court on a sua sponte motion for summary dismissal because the notice of appeal was filed several months after issuance of a Memorandum Decision and Order dismissing a protest of the State Engineer’s water change order. Appellant Mark Christopher Tracy “doing business as” Emigration Canyon Homeowners Association (ECHO) filed the action in the district court. The district court issued its Memorandum Decision and Order on August 29, 2019. ECHO filed a notice of appeal on January 24, 2020.

In response to the sua sponte motion, ECHO argues that because there was no separate judgment entered by the district court, as required by rule 58A(a) of the Utah Rules of Civil Procedure, the dismissal order was not entered until 150 days after its issuance, as provided in rule 58A(e)(2)(B). The State Engineer agrees that “[b]ecause no separate judgment was entered, the Order became final only after 150 days—two days after Mr. Tracy filed his notice of appeal, Based on the lack of a separately filed Judgment, Mr. Tracy’s appeal appears to be timely.” Emigration Improvement District argues that the appeal should be dismissed as untimely.¹


¹ Alternatively, it argues that the pro se notice of appeal should be dismissed because ECHO cannot represent itself pro se and Tracy is not an attorney. However, the district court found that Emigration Canyon Homeowners Association was a registered “dba” for Tracy. Tracy correctly notes that this was not a basis for dismissal stated in the sua (continued...)

Rule 58A provides that if no separate judgment is prepared by any party and signed by the court, a “decision, however designated” will be deemed complete and entered after “150 days have run from the clerk recording the decision, however designated, that provides the basis for the entry of judgment.” Utah R. Civ. P. 58A(e)(2)(B). ECHO argues that the memorandum decision and order is not a judgment under rule 58A(e)(2)(A) but rather a “decision, however designated” under rule 58(A)(e)(2)(B), which became final 150 days after August 29, 2019. Because the decision would not be complete and entered until January 26, 2020, the notice of appeal was timely filed on January 24, 2020, after the announcement of the decision. *See* Utah R. App. P. 4(c) (“A notice of appeal filed after the announcement of a decision, judgment, or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof.”).

IT IS HEREBY ORDERED that the sua sponte motion for summary disposition is withdrawn. The appeal shall proceed to the next procedural stage.

Dated this 28 day of May, 2020.

FOR THE COURT:



Gregory K. Orme, Judge

(...continued)

sponte motion. This order is without prejudice to a motion raising this issue filed by any party.

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2020, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

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Case No. 20200295
District Court No. 190901675