

UNITED STATES COURT OF APPEALS

May 26, 2009

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

KARL DEE KAY,

Plaintiff - Appellant,

v.

NANCY BEMIS; TIM GREEN; JEREMY
HEYWOOD; JAN BODILY; ESTHER
SCHUBE; RONALD STAMPER;
RICHARD L. SMITH, Utah state prisoner;
ROGER A. BURNETTE, Captain, Utah
state prison; SHELBY HERBERT,
Captain, Inmate Grievance Coordinator;
BILLIE CASPER, Grievance Coordinator;
CRAIG BALLS, Grievance Coordinator;
TOM ANDERSON, Correctional
Administrator for Clint Friel; JAN
BODILY, individually; JIM ALLRED,
BCCC Supervisor, individually and official
capacity,

Defendants - Appellees,

CLINT FRIEL, Warden Utah State prison;
J. POPE, Deputy Warden Utah State
prison; DOUG COOK, Lieutenant SSD
Wasatch; DALIN SMITH, Sargent SSD
Wasatch,

Consolidated Defendant -
Appellees.

No. 09-4042
(D.C. No. 2:05-CV-00995-DS-DN)
(D. Utah)

ORDER

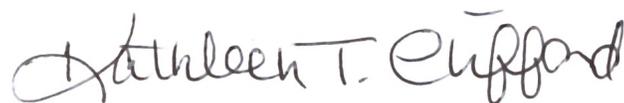
Before **HARTZ, O'BRIEN**, and **HOLMES**, Circuit Judges.

This appeal is before the court based on a show cause order challenging appellate jurisdiction and directing the parties to obtain a district court order either granting certification under Fed. R. Civ. P. 54(b) as to the February 10, 2009 Order appealed by Plaintiff Karl Dee Kay or explicitly adjudicating the claims against all remaining Defendants in the underlying consolidated action - D. Utah Nos. 2:05-CV-00995 and 2:06-CV-00023-DS. *See Stockman's Water Company, LLC v. Vaca Partners, L.P.*, 425 F.3d 1263, 1265 (10th Cir. 2005); *see also Trinity Broadcasting Corp. v. Eller*, 827 F.2d 673, 675 (10th Cir. 1987), *cert. denied*, 487 U.S. 1223 (1988) (a judgment in a consolidated action that does not dispose of all claims is not a final appealable decision under 28 U.S.C. § 1291).

This court lacks jurisdiction. The parties failed to move in the district court for a Rule 54(b) certification. Plaintiff's claims against several Defendants in case No. 2:05-CV-00995 remain unresolved in the district court. Consequently, the February 10, 2009 Order appealed by Plaintiff is interlocutory and not immediately appealable under 28 U.S.C. § 1291 or under any recognized exception to the final judgment rule.

The appeal is **DISMISSED** for lack of appellate jurisdiction.

Entered for the Court,
Elisabeth A. Shumaker, Clerk



Kathleen T. Clifford
Attorney - Deputy Clerk