

September 2, 2011

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

FOR THE TENTH CIRCUIT

MARCO A. ROCHA,

Plaintiff - Appellant,

v.

No. 11-1275

(D.C. No.1:10-CV-00357-CMA-MEH)

A. ZAVARAS, CDOC Director; RON
LEYBA, FMCC, Warden; D. KIEFER,
FMCC, Cpt.; McKIBBIN, FMCC,
Sgt.; MARIA RAEL, FMCC C/O; D.
ROSS, FMCC, Sgt.; G. VANDETTI,
CSP, Cpt.; A. DeCESARO, CDOC
Grievance Officer,

Defendants - Appellees,

and

S. TWILLEGGER, FMCC Case
Manager,

Defendant.

ORDER

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

This court lacks jurisdiction over this appeal because all of the claims
against all of the parties have not been finally adjudicated. *See* Fed. R. Civ. P.
54(b).

Pursuant to *Lewis v. B.F. Goodrich*, 850 F.2d 641, 645-46 (10th Cir. 1988) (10th Cir. 1988), this court gave the plaintiff an opportunity to obtain either a final judgment or a Rule 54(b) certification from the district court. The plaintiff moved for certification in the district court, but the magistrate judge, to whom the matter had been referred, denied the motion. The plaintiff did not appeal that decision to the district court. *See* 28 U.S.C. § 636(b)(1)(A), (B), (C).

Moreover, this court may not hear an appeal directly from a magistrate's order. *See Colorado Building & Construction Trade Council v. B.B. Andersen Construction Co.*, 879 F.2d 809 (10th Cir. 1989). In any event, a district court order denying Rule 54(b) certification is not appealable. *See McCall v. Deeds*, 849 F.2d 1259 (9th Cir. 1988); *Makuc v. American Honda Motor Co., Inc.*, 692 F.2d 172, 173-74 (1st Cir. 1982).

Because the plaintiff did not obtain either a Rule 54(b) certification or a final judgment within the time allowed by this court, this appeal is **DISMISSED**.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney