

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 3, 2014

Elisabeth A. Shumaker  
Clerk of Court

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CHINONYEREM OSUAGWU,

Plaintiff - Appellee,

v.

GILA REGIONAL MEDICAL CENTER,

Defendant - Appellant,

and

GREGORY KOURY; DON WHITE,

Defendants.

No. 13-2216  
(D.C. No. 1:11-CV-00001-MV-SMV)

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**ORDER**

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Before **LUCERO, O'BRIEN**, and **TYMKOVICH**, Circuit Judges.

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Defendant Gila Regional Medical Center has appealed from the district court's judgment entered on November 7, 2013. Upon consideration of the parties' joint response to the court's order of December 26, 2013, and upon review of the file as a whole, the court concludes that it lacks jurisdiction to consider this appeal.

The district court's November 7, 2013 judgment provides for the filing of a motion for pre-judgment interest. A motion for pre-judgment interest has been filed and remains pending with the district court. Pre-judgment interest is considered part of plaintiff's damages, *see Osterneck v. Ernst & Whinney*, 489 U.S. 169, 175 (1989) and *Utah*

*Women's Clinic, Inc., v. Leavitt*, 75 F. 3d 564, 568 (10th Cir. 1995), and an order that leaves the amount of damages undetermined is generally not considered final and appealable. *See Albright v. UNUM Life Ins. Co.*, 59 F. 3d 1089, 1093 (10th Cir. 1995).

Accordingly, this appeal is dismissed for lack of jurisdiction. When the district court enters a final, appealable decision, appellant may file a new appeal, in accordance with the court rules. *See Dodge v. Cotter Corp.*, 328 F. 3d 1212, 1221 (10<sup>th</sup> Cir. 2003) (judgment was not final until district court set forth sum certain for every part of award, including pre-judgment interest; notice of appeal filed 30 days later was timely.)

**APPEAL DISMISSED.**

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk



by: Christine Van Coney  
Counsel to the Clerk