

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JUL 22 1998

PATRICK FISHER
Clerk

ELMA AUGUSTINE,

Plaintiff-Appellant,

v.

JAMES ADAMS; ADAMS, BROWN,
BERAN AND BALL, CHTD.,
a Professional Association; JOHN
BIRD; ROBERT GLASSMAN;
GLASSMAN, BIRD & BRAUN,
a Partnership,

Defendants-Appellees.

and

CHARLES HAYNES,

Defendant.

No. 97-3261
(D.C. No. 95-CV-2489 GTV)
(D. Kan.)

ORDER AND JUDGMENT*

Before **KELLY, BARRETT**, and **HENRY**, Circuit Judges.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff Elma Augustine appeals the district court's grant of summary judgment in favor of defendants-appellees on her professional malpractice claims arising out of the preparation and probate of her mother's will and trust. This court lacks jurisdiction over this appeal because the district court has not adjudicated all of the claims against all of the parties. See Fed. R. Civ. P. 54(b).

The plaintiff appeals an order of the district court dismissing some, but not all, of the defendants. Plaintiff voluntarily dismissed the claims against one of the defendants without prejudice. Therefore, the order dismissing the claims against the defendants-appellees with prejudice is not a final order. See Cook v. Rocky Mountain Bank Note Co., 974 F.2d 147, 148 (10th Cir. 1992). Pursuant to Lewis v. B.F. Goodrich, 850 F.2d 641, 645-46 (10th Cir. 1988) (en banc), this court gave the plaintiff fifteen days in which to obtain either a final judgment or a Rule 54(b) certification. The district court denied the plaintiff's motion for certification.

Accordingly, this appeal is DISMISSED. The mandate shall issue forthwith.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge