

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 07-3728

Harold R. Stanley, *
*
Appellant, *
* Appeal from the United States
v. * District Court for the
* Western District of Missouri.
Honorable Jack Grate; Lester Wight; *
Marcia E. Stanley, * [UNPUBLISHED]
*
Appellees. *

Submitted: March 9, 2009
Filed: March 17, 2009

Before BYE, COLLOTON, and GRUENDER, Circuit Judges.

PER CURIAM.

Harold Stanley appeals the district court's¹ dismissal of his civil rights complaint. After careful review, we conclude that the court's judgment was not a final, appealable order because it did not dispose of the counterclaim raised by Marcia Stanley in her answer. See 28 U.S.C. § 1291 (courts of appeals shall have jurisdiction of appeals from all final decisions of district courts); Fed. R. Civ. P. 54(b) (any order that adjudicates fewer than all claims does not end action as to any claims or parties);

¹The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

Miller v. Special Weapons, L.L.C., 369 F.3d 1033, 1034-35 (8th Cir. 2004) (noting problems with allowing counterclaims that are “dead but undismissed” or are substantively resolved by non-final orders, to proceed; dismissing appeal for lack of jurisdiction where district court failed to rule on counterclaim even though it was necessarily disposed of by summary judgment order); Thomas v. Basham, 931 F.2d 521, 522-23 (8th Cir. 1991) (jurisdictional issues will be raised sua sponte when there is indication that jurisdiction is lacking; court lacked jurisdiction over appeal from summary judgment order because defendant’s counterclaims were outstanding at time of order).

Accordingly, we dismiss the appeal for lack of jurisdiction.

United States Court of Appeals

For The Eighth Circuit

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March 17, 2009

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RE: 07-3728 Harold Stanley v. Honorable Jack Grate, et al

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00a.m. today. Please hold the opinion in confidence until that time.

Please review [Federal Rules of Appellate Procedure](#) and the [Eighth Circuit Rules](#) on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing en banc must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing en banc which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans
Clerk of Court

SRD
Enclosure(s)

cc: Ms. Emily Ann Dodge
Mr. Michael Scott Dodig
Mr. Daniel E. Hamann
Mr. Harold R. Stanley
Ms. Ann Thompson

District Court/Agency Case Number(s): 4:06-cv-00752-GAF