

February 23, 2012

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

FOR THE TENTH CIRCUIT

STEPHEN CRAIG BURNETT,

Plaintiff - Appellant,

v.

KIM LEATHERWOOD, Mail Clerk;
JOSEPH TAYLOR, Warden; JOSEPH
SEBENICK, Internal Affairs Officer;
MICHAEL MUNDAY, Disciplinary
Hearing Officer; KATHY JONES,
Warden's Secretary/Grievance Officer;
DEBBIE MORTON, Administrative
Review Authority,

Defendants - Appellees.

11-6264

(D.C. No. 5:10-CV-00769-M)

ORDER

Before **BRISCOE**, Chief Circuit Judge, **LUCERO** and **GORSUCH**, 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 district court denied the plaintiff's motion for certification.

In response to this court's show cause order, the plaintiff argues that it would be a waste of judicial resources to go to trial on the remaining claim. However, without a final judgment or a proper Rule 54(b) certification, this court lacks jurisdiction. Moreover, only the district court may issue a Rule 54(b) certification. *See* Fed. R. Civ. P. 54(b).

Accordingly, this appeal is **DISMISSED**. Dismissal of this appeal does not preclude the plaintiff from filing a timely appeal after the entry of final judgment.

Entered for the Court

ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Ellen Rich Reiter".

Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney