

FILED

April 28 2015

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 14-0657

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 14-0657

JON KRAKAUER,

Plaintiff and Appellee,

v.

STATE OF MONTANA, by and through its
COMMISSIONER OF HIGHER EDUCATION,
Clayton T. Christian,

Defendant and Appellant.

ORDER

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STATE OF MONTANA

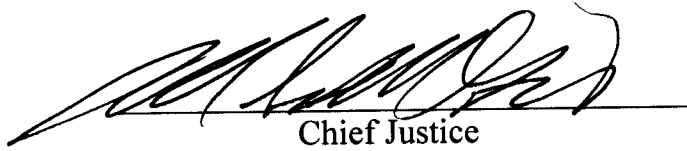
This is an appeal from a September 25, 2014 memorandum and order in which the First Judicial District Court granted Jon Krakauer's motion for summary judgment and denied the cross-motion for summary judgment of the Commissioner of Higher Education. As part of that memorandum and order, the District Court stated that it was "not in a position to rule on [Krakauer's request for attorney fees] at this juncture," but that it "will consider simultaneous briefs on the attorney fee issue filed within 30 days of the date of this Memorandum and Order." Krakauer filed a notice of entry of judgment on September 26, 2014, and the Commissioner filed the notice of appeal on October 15, 2014.

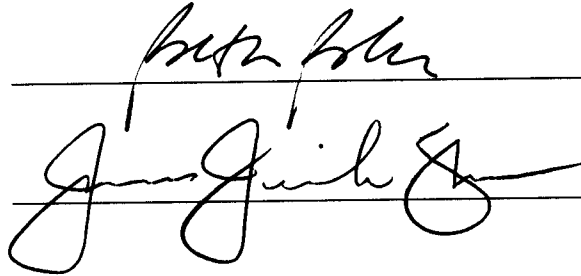
An appeal may be taken from a final judgment, including any necessary determination of the amount of costs and attorney fees awarded. M. R. App. P. 4(1)(a). In this case, the District Court has not yet entered an order on the issue of attorney fees. As a result, we conclude that this appeal is premature. *See Harding v. Garcia*, 2007 MT 120, ¶ 16, 337 Mont. 274, 159 P.3d 1083; *Marez v. Marshall*, 2014 MT 333, ¶ 40, 377 Mont. 304, 340 P.3d 520; *Bitterroot River Protective Ass'n v. Bitterroot Conservation Dist.*, 2011 MT 51, ¶ 17, 359 Mont. 393, 251 P.3d 131.

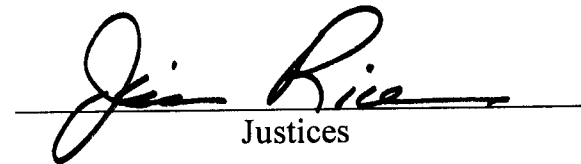
IT IS ORDERED that this appeal is DISMISSED without prejudice.

The Clerk is directed to provide copies of this order to all counsel of record.

DATED this 28th day of April, 2015.

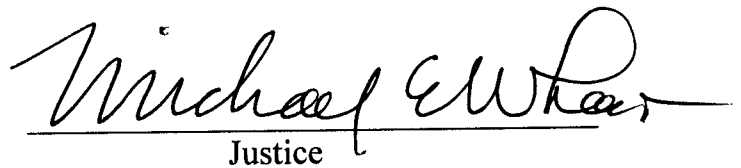

Chief Justice




Justices

Justice Michael E Wheat, dissenting.

I agree that this matter needs to be remanded to the District Court for a hearing and final decision on attorney's fees; however, rather than dismissing the appeal, I would hold it in abeyance until the District Court issued its final order on attorney fees. Judicial economy and convenience to the parties are important considerations in situations like this.


Justice