

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

No. 07-3728

Harold R. Stanley,

Appellant,

v.

Honorable Jack Grate; Lester Wight;
Marcia E. Stanley,

Appellees.

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* Appeal from the United States
* District Court for the
* Western District of Missouri.
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* [UNPUBLISHED]
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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.
