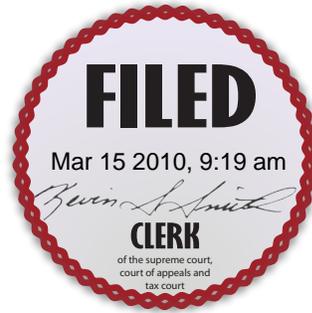


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DENNIS ADKINS,)

Appellant-Plaintiff,)

vs.)

No. 68A01-0910-CV-522

JUDY SAUNDERS, Individually and)
d/b/a PREVENTION AND MORE HERBS,)

Appellee-Defendant.)

APPEAL FROM THE RANDOLPH CIRCUIT COURT
The Honorable Jay L. Toney, Judge
Cause No. 68C01-0508-CT-309

March 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff Dennis Adkins appeals the trial court's order granting summary judgment in favor of appellee-defendant Judy Saunders, individually and d/b/a Prevention and More Herbs, on Adkins's complaint against Saunders. Finding that this is a non-certified discretionary interlocutory appeal, we dismiss.

On August 25, 2005, Adkins filed a complaint against Saunders, alleging negligence and unlawful practice of medicine. On November 14, 2005, Saunders answered Adkins's complaint and filed a counterclaim for defamation. Saunders moved for summary judgment on Adkins's complaint on April 13, 2009, and following a hearing, the trial court granted the summary judgment motion in Saunders's favor on September 29, 2009.

According to the chronological case summary (CCS), Adkins has never asked that the trial court certify the September 29, 2009, order for interlocutory appeal, nor has the trial court done so. In Adkins's case summary on appeal before this court, he indicated that the judgment being appealed was final as to all parties. That is simply not the case, however, inasmuch as Saunders's counterclaim for defamation is still pending before the trial court. Indeed, the CCS indicates that approximately two weeks after Adkins filed the notice of appeal, the trial court held a pretrial conference and ultimately concluded that it would "take further action after Court of Appeals determines whether the interlocutory appeal will be accepted." Appellant's App. p. 9. Inasmuch as this is not an

interlocutory appeal as of right and the trial court's order has not been certified for a discretionary interlocutory appeal, we do not have jurisdiction over this cause. See Ind. Appellate Rule 14(A)-(B).

This appeal is dismissed without prejudice and the cause is remanded to the trial court for further proceedings.

BAILEY, J., and ROBB, J., concur.