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IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE STEVEN CONDIE,

Plaintiff-
Appellant,

vs.

DR. ROBERT L. YOUNGBLOOD,

Defendant-
Respondent.

[redacted]

Appeal from the
Third Judicial District Court
[redacted]
Honorable [redacted]

FILED

DEC 21 [redacted]

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE STEVEN CONDIE, Plaintiff- Appellant, vs. DR. ROBERT L. YOUNGBLOOD, Defendant- Respondent.	)	Case No. 16646

RESPONDENT'S BRIEF

Appeal from an Order of the
Third Judicial District Court in and for Salt Lake County,
State of Utah
Honorable Homer F. Wilkinson, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE STEVEN CONDIE, Plaintiff-Appellant,	)	
vs.	)	Case No. 16646
DR. ROBERT L. YOUNGBLOOD, Defendant-Respondent.	)	

RESPONDENT'S BRIEF

NATURE OF THE CASE

This is an appeal from an order denying a Motion to Set Aside a Default Judgment previously entered.

DISPOSITION IN LOWER COURT

Third District Judge Homer F. Wilkinson denied the plaintiff-appellant's Motion to Set Aside Judgment and affirmed the Judgment of Third District Judge Christine M. Durham which dismissed Plaintiff-Appellant's complaint.

STATEMENT OF FACTS

The facts presented by Appellant Condie in his brief are incomplete and fail to adequately outline the sequence of events which occurred in this case. For this reason, Respondent Youngblood shall supplement and enlarge the facts submitted by the appellant.

The issues in this case are by necessity completely inter-

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woven to the sequence of numerous occurrences during the litigation process. In order to simplify the comprehension of this sequence Respondents will describe the events in a list format rather than the use of traditional text. Respondent believes that this method will assist this Court in its understanding of the factual sequence as they relate to the issues presented in this appeal.

August 7, 1974	Plaintiff is injured in motorcycle accident, (Appellant's brief, p. 2).
September 6, 1975	Plaintiff enters hospital and treatment is begun by Respondent Youngblood. (Appellant's brief, p. 2).
October, 1975	Plaintiff sues hospital for malpractice (Appellant's brief, p. 2).
April 1, 1976	"Utah Health Care Malpractice Act", Section 78-14-1 to 78-14-11, U.C.A. 1953 becomes effective.
September 15, 1977	Attorney Taylor Carr files complaint with District Court. (R., pp. 2-3).
September 15 to December 15, 1977	Attorney Carr issues summons to Brent Lowther, a process server. (Affidavit of Taylor Carr, (R., p. 5).
September 14, 1978	Identical complaint to Carr complaint is signed and dated by Attorney Don Hammill and issued to process server, R.E. Weaver. (R., p. 4).
September 14, 1978	Hammill complaint and summons served upon Defendant. (R., p. 7).
September 15, 1978	Attorney Carr signs Withdrawal of Counsel and mails copies to parties including Plaintiff. (R., p. 6).

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September 20, 1978	Attorney Don Hammill signs Notice of Appearance of Counsel. (R., p. 8).
September 21, 1978	Hammill Summons and Return of Service, Carr Withdrawal of Counsel, and Hammill Entry of Appearance all filed with Clerk's Office. (R., pp. 4, 6, 7, 8).
December 19, 1978	Attorney Hammill withdraws as counsel and sends notice to parties including Plaintiff. (R., p. 9).
January 12, 1979	Defendant's attorney, David Slagle files Notice Requiring Plaintiff to Appoint Another Attorney Or To Appear in Person and mails notice to Plaintiff's address. (R., pp. 11-12).
January 13, 1979	Notice is delivered to Plaintiff's address by certified mail and signed for by Stephanie Hogenson. (R., p. 25). Appellant has admitted receiving this notice. (Appellant's brief, p. 3).
February 1, 1979	Defendant's attorney files Motion to Quash Service of Summons and/or Motion to Dismiss Plaintiff's Complaint and mails notice to Plaintiff's address. (R., pp. 13-14).
February 5, 1979	Notice and Motion are delivered to Plaintiff's address and are signed for by "M. Condie." (R., pp. 26, 38).
February 13, 1979	Plaintiff's Motion to Dismiss is granted by the Honorable Christine Durham and Judgment of Dismissal is filed with the Clerk. (R., pp. 17, 18).
February 13, 1979	Copy of Judgment of Dismissal is mailed to Plaintiff's address. (R., p. 19).
"Latter half" of May, 1979	Plaintiff learns that Judgment of Dismissal has been entered. (Plaintiff's Affidavit. (R., p. 21).

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July 10, 1979	Plaintiff's present attorney files Motion to Set Aside Judgment (R., p. 23).
July 18, 1979	Hearing is held before the Honorable Homer Wilkinson and Plaintiff's Motion to Set Aside Judgment is denied. (R., p. 30).
July 30, 1979	Order Denying Plaintiff's Motion to Set Aside Judgment is executed by court and filed with Clerk. (R., p. 32).
August 27, 1979	Notice of Appeal from Order Denying Plaintiff's Motion to Set Aside Judgment is filed with clerk. (R., p. 34).

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ERR IN FAILING TO SET ASIDE THE JUDGMENT OF DISMISSAL.

As Appellant admits in his brief the question of whether a trial court should set aside a default judgment is largely a discretionary matter and this Court will reverse the lower court's ruling only if it is clear that the court abused that discretion. Heath v. Mower, 597 P.2d 855 (Utah 1979). This reversal can only occur if there is an abuse of discretion that is arbitrary, capricious, or not based on adequate findings of fact or on law. Pacer Sport and Cycle Inc. v. Myers, 534 P.2d 616 (Utah 1975).

It is the burden of the moving party to establish sufficient grounds to justify relief under Rule 60(b). State Collec-

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tion Bureau v. Roybal, 327 P.2d 337 (N.M. 1958). The movant must show that he used due diligence and that he was prevented from appearing by circumstances over which he had no control. Airkem Intermountain Inc. v. Parker, 513 P.2d 429 (Utah 1973).

Applying the preceding principles to this case clearly mandates affirmance of the lower court's decision.

A. Plaintiff's Motion to Set Aside the Judgment was Untimely.

The failure of Plaintiff to make a timely application pursuant to Rule 60(b) is in itself sufficient to affirm the lower court's decision. Rule 60(b) requires any motion based upon "mistake, inadvertence, surprise, or excusable neglect" to be brought "not more than three months after the judgment, order, or proceeding was entered or taken."

The Judgment of Dismissal was entered in this case on February 13, 1979. The Motion to Set Aside the judgment was not made until July 10, 1979. Thus, nearly five months elapsed between the time of the judgment and the time of the Rule 60(b) motion.

This Court in Pitts v. McLachlan, 567 P.2d 171 (Utah 1977) has held that Subsection 1 of Rule 60(b) is the exclusive remedy for actions involving inadvertence or mistakes in failing to protect a litigant's rights. This Court stated:

> It seems inescapable, also, to conclude that Rule 60(b)(1) is applicable here in the letter and spirit of rules governing procedure

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> and practice and the doctrine of the exercise of diligence in the presentation of one's rights, failing which they are amenable to a limitations statutory feature looking to repose of litigation after a reasonable time, interdicted here to be three months under Rule 60(b)(1). Id. at 173-174.

The court in Pitts rejected the use of Subsection (7) of Rule 60(b) as applicable in cases where Subsections (1-6) clearly apply and therefore rejected the argument that a "reasonable time" for inadvertence and neglect was beyond the three-month limitation of Subsection (1).

In Peck v. Cook, 510 P.2d 530 (Utah 1973) the plaintiff in that case filed a Motion to Set Aside a Default Judgment on the ground that through the mistakes, inadvertence, and excusable neglect of his attorney the plaintiff had failed to include necessary elements in a default judgment he had obtained against a defendant. This Court affirmed the lower court's dismissal of this motion on the grounds that the motion was untimely since it was not made within the three months after the default judgment was entered.

Plaintiff's own affidavit admits that he learned of the judgment approximately three months after it had been entered (R., p. 21) and yet no motion was made for nearly two more months.

Appellant in his brief quotes this Court's case of Mayhew v. Standard Gilsonite Company, 376 P.2d 951 (Utah 1962) in support of his position that the judgment should have been set

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aside. Even this quotation, however, states that a "timely application" must be made. (Appellant's brief, p. 4).

In this case Plaintiff failed to meet the time requirements of Rule 60(b) and for this reason alone the lower court's judgment should be affirmed.

B. Plaintiff Failed to Meet His Burden in Asserting Sufficient Grounds Under Rule 60(b) to Justify Relief.

Plaintiff contends that he has "tendered a reasonable excuse for his non-appearance and failure to attend the hearing." (Appellant's brief, p. 5). In his affidavit filed July 2, 1979 Plaintiff stated that he never received copies of the Motion to Dismiss nor the Notice of Hearing; that the address contained in the certificate of mailing to the plaintiff was the address of his estranged wife; that for "most of the month" of January, 1979 Plaintiff was traveling and not residing at the C Street address; and that Plaintiff spent "most of the month" of February, 1979 in the hospital. (R., p. 21).

Even if Plaintiff had filed a timely Motion for Relief under Rule 60(b) the reasons stated in his affidavit are not legally sufficient to justify relief under that rule.

First, it is clear that Defendant in obtaining the judgment of Dismissal followed the correct procedure in circumstances where a party is not being represented by an attorney. A review of the procedure and sequence of events which occurred in this case is as follows:

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On December 19, 1978 attorney Don Hammill filed a "Withdrawal of Counsel and mailed a copy of this document both to Defendant's attorney and to Plaintiff at 326 C Street, Salt Lake City, Utah 84103. (R., p. 9).

Hammill's Withdrawal of Counsel complied with Section 78-51-34 and Section 35, Utah Code Annotated (1953). The former statute allows an attorney to withdraw before judgment or final determination "upon his own consent, filed with the clerk or entered upon the minutes." The latter statute requires notice to be given to the adverse party of such withdrawal. It states:

> Effect - Notice of Change. - When an attorney is changed as provided in the next preceding section (78-51-34), written notice of the change and of the substitution of a new party or of the appearance of the party in person must be given to the adverse party; until then he must recognize the former attorney.

This Court in Salina Canyon Coal Company v. Klemm, 290 P. 161 (Utah 1930) commented upon the predecessor of this statute and stated:

> Our statutes seem to imply that an attorney who has appeared for a party may be treated as such by opposing counsel until opposing counsel are notified of dismissal or change of attorneys.

Likewise, a California court, in interpreting an identical statute to that of Utah's, stated that the purpose of the statute is to allow the court to know whether the party has an attorney of record. Until there is a showing that an attorney has been discharged or substituted the former attorney should

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receive all papers. Russ v. Russ, 156 P.2d 767 (Ct. App. Cal. 1945). See also Epley v. Califro, 323 P.2d 91 (Cal. 1958).

Thus, Section 78-51-35 requires that notice of withdrawal or substitution must be sent to the opposing party. This statute, contrary to Appellant's assertion in his brief, is not for the protection of the party whose attorney has withdrawn but is rather for the protection of the adverse party. (Appellant's brief, p. 5). In referring to Section 285 of the California Code of Civil Procedure, identical to Section 78-51-35, U.C.A., a California court noted the following:

> While Section 285 of the Code of Civil Procedure provides that when an attorney is changed, written notice must also be given to the adverse party, such notice is for the protection of the adverse party. . .. The party effecting the change cannot object to his own failure to give notice. Anderson v. City Railway Ry. Company, 42 P.2d 969 (Ct. App. Cal. 1935).

Thus, the Withdrawal of Counsel filed by Attorney Hammill informed Defendant that Hammill was no longer representing Plaintiff and released Hammill from any further requirement of receiving papers on behalf of Plaintiff.

Upon receipt of Hammill's withdrawal, Section 78-51-36 then became effective and required Defendant's attorney to notify Plaintiff to obtain another attorney or to appear in person. This section states the following:

> Notice to appoint successor - When an attorney dies or is removed or suspended, or ceases to

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> act as such, a party to an action or proceeding for whom he was acting as attorney must before any further proceedings are had against him be required by the adverse party, by written notice, to appoint another attorney or to appear in person.

This section was clearly intended to safeguard a litigant who no longer has an attorney by advising him that he must either obtain a replacement attorney or represent himself in further proceedings. Such statute advises the litigant of his responsibility and consequences if the responsibility is not met.

In discussing a similar Montana statute the Supreme Court of Montana stated the following:

> The statute has been discussed at length in Endresse v. Van Vleet, supra, 118 Mont. at page 537, 169 P.2d at page 721, where it is said: "In 3 Cal.Jur., sec. 41, p. 632, concerning an identical section (286) of the California Code of Civil Procedure, it is said: 'This section means no more than it plainly says, viz., that no proceedings may be had against a party, no judgment or order or other step be taken, until he appoints an attorney unless the prescribed notice be first given. Hand v. Hand, 312 P.2d 990, 993 (Mont. 1957).

In the instant case Defendant's attorney sent by certified mail a notice in compliance with this statute on January 12, 1979. (R., p. 11). The notice was sent to the same address which had been utilized in the past by Plaintiff's own attorneys in notifying him of their withdrawal. (R., p. 12). Plaintiff received this notice even though the receipt was signed by a

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person named Stephanie Hogenson. (Appellant's brief, p. 3; R., p. 27). Some 20 days later Defendant's attorney again sent by certified mail a Motion to Dismiss and Notice of Hearing. (R., pp. 25-28). This notice was sent to the same address as previously and was receipted by a M. Condie. (R., p. 28).

Approximately two weeks later the hearing was held before the Honorable Christine Durham at which time the "court determined that the plaintiff received proper notice of said hearing." (R., p. 18).

At no time did Plaintiff contact Defendant's attorney and request that additional time be given to him to find an attorney, inform him that Plaintiff would be unavailable at the address listed in the pleadings for service of papers, or make any other communication indicating Plaintiff's inability to receive pleadings or represent himself in any proceeding. Defendant correctly followed the procedure in making the Motion for Dismissal.

After the judgment had been entered Defendant's counsel again mailed to Plaintiff a copy of said judgment to the same address on the very day that the judgment was entered. (R., p. 19).

The alleged failure of Plaintiff to learn of this judgment is not grounds for Rule 60(b) relief since Rule 58A(c) provides that a judgment is complete and is deemed entered for

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all purposes when it is signed and filed, not when notice is received by the parties. The failure to learn of a judgment is therefore not grounds for relief. In Re Bundy's Estate, 241 P.2d 462 (Utah 1952).

The trial court ruled that the affidavit filed by Plaintiff was insufficient to justify the failure to attend or otherwise provide for the February 13 hearing. The affidavit leaves many questions unanswered. It fails to explain, for example, what relationship Plaintiff had with his "estranged" wife; whether Plaintiff still resided at the "C" Street address during that time; why he received the January 13 notice but did not receive the February 1 notice; when and where Plaintiff was traveling in the month of January; the reason for Plaintiff's hospitalization in February and the days of such hospitalization; and finally, why the plaintiff did not learn of the judgment after it had also been sent to that address.

The case of Heath v. Mower, 597 P.2d 855 (Utah 1979) is remarkably similar to the instant case. In that case Defendant's counsel filed a Notice of Withdrawal and sent a copy to the defendant and to the other party. A Notice of Pretrial was sent by the District Court clerk to the defendant's address and Plaintiff's attorney additionally mailed a copy of the notice by certified mail to Defendant's address. The notice was returned "unclaimed" a short time later.

A pretrial was held and the defendant failed to appear.

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The court entered judgment against him and in favor of plaintiff. Several days later a Mail-O-Gram was filed with the Clerk's office stating that the defendant would be unable to attend the prior meeting and that an attorney would contact the plaintiff's attorney shortly.

Plaintiff filed a timely motion pursuant to Rule 60(b) asking for the default judgment to be set aside. Defendant filed an affidavit claiming he never received notice of the pretrial by certified mail and that he only received notice through a telephone conversation with his former wife.

This Court affirmed the lower court's denial of relief from the default judgment because the defendant did not offer "the trial court a reasonable excuse for his non-appearance so as to bring him under the rule that courts should liberally exercise their power to set aside default judgments."

This Court noted that the affidavit filed by the defendant did not offer any significant reason why he did not appear at the pretrial hearing and why he did not pick up the notice sent to his address. The opinion observed that "aside from these vague and sometimes incorrect statements, Mower's affidavit does not attempt to explain the reasons for his failure to appear at the pretrial hearing." In addition, a party trying to set aside a default judgment "must show that he has used due diligence and that he was prevented from appearing by circumstances over which he had no control." Citing the case of Airkem Intermountain v.

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Parker, 513 P.2d 431 (Utah 1973). This Court concluded by holding that the trial court was within its discretionary bounds in ruling that Defendant did not satisfy the Airkem standard to explain why he claimed the various attempts to notify him were futile.

Therefore, the record supports the lower court's ruling that even had a timely application for relief been made, the plaintiff would still not be entitled to Rule (60(b) relief because of his failure to adequately explain the reasons for his non-appearance and non-receipt of the properly served notices upon him. For this reason the lower court decision should be affirmed.

POINT II

DEFENDANT'S MOTION FOR DISMISSAL OF THE COMPLAINT AND TO QUASH SERVICE WAS MERITORIOUS AND THE TRIAL COURT DID NOT ERR IN GRANTING IT.

Appellant argues that as a matter of law the defendant was not entitled to the Judgment of Dismissal upon the grounds urged by the defendant. Appellant devotes more than half of his brief to this argument. (Appellant's brief, pp. 6-12).

Because Plaintiff-Appellant did not make a timely application for relief nor did he demonstrate sufficient grounds under Rule 60(b) to be entitled to relief, any question concerning the Judgment of Dismissal is merely academic and in this case serves no useful purpose. However, since Plaintiff has ar-

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gued the merits of the original Order of Dismissal, Defendant Youngblood will briefly respond.

On February 1, 1979 Defendant's attorney filed a "Motion to Quash Service of Summons and/or Motion to Dismiss Plaintiff's Complaint." (R., p. 13). As noted by the appellant, Defendant Youngblood claimed improper service of the summons and complaint; barring of the action by the statute of limitations; failure to comply with the Utah Health Care Malpractice Act; and failure to diligently prosecute the claim.

Defendant based his claim of improper service upon the following facts: The original complaint was filed on September 15, 1977 by Plaintiff's attorney of record, Taylor Carr. (R., pp. 2-3). Mr. Carr later stated in an affidavit that he had issued a summons in this case within three months after the filing of the complaint by placing it in the hands of a process server named Brent Lowther. (R., p. 5). Assuming this to be true it is undisputed that Defendant was never served with the summons issued by Mr. Carr.

Instead, an unusual event occurred. On September 14, 1978 (one day short of being a full year from the date that the Carr complaint was filed) Mr. Don Hammill, an attorney, issued a second summons and rewrote the original complaint using his name and letterhead. (R., p. 6). The Hammill summons and complaint was served upon Defendant on the same day, September 14, 1978. (R., p. 7).

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At the time that this second summons was issued and served Mr. Hammill was not the attorney of record of Plaintiff. Mr. Carr did not sign a Withdrawal of Counsel until September 15, 1978. (R., p. 8). Mr. Hammill did not sign a Notice of Appearance until September 20, 1978. (R., p. 4). Neither the withdrawal nor the appearance were filed with the Clerk's Office until September 21, 1978. (R., pp. 4, 8).

Rule 3 of the Utah Rules of Civil Procedure state that an action may be commenced by filing a complaint with the court or by service of a summons. This action was obviously commenced by the filing of the complaint on September 15, 1977.

Rule 4(b) states the following:

> If an action is commenced by the filing of a complaint, summons must issue thereon within three months from the date of such filing. The summons must be served within one year after the filing of the complaint or the action will be deemed dismissed. . .. (Emphasis added).

Rule 4(a) defines "issuance of summons" as follows:

> The summons may be signed and issued by the plaintiff or his attorney. A summons shall be deemed to have issued when placed in the hands of a qualified person for the purpose of service. Separate summonses may be issued and served. (Emphasis added).

Thus, if September 15, 1977 is to be the commencement of the action it was necessary for the record to reflect that Defendant had been served with the summons which had been issued by Attorney Carr three months from the date of filing the complaint. The record on its face, however, shows that the

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summons served was dated September 14, 1978 and was signed by Attorney Don Hammill. (R., p. 6). Further, the complaint which was served was not the complaint that had been filed almost a year earlier.

The summons served upon Defendant in this case, therefore, was neither issued within "three months" from the date of the original filing of the complaint nor was it issued by the plaintiff's attorney. At the time the summons was served upon Defendant, Taylor Carr was Plaintiff's attorney and the procedure outlined by Utah statutory law, previously referred to, had not yet been invoked. For this reason Hammill could not issue a summons or change Carr's complaint by merely placing his name upon a revised version.

As stated by the Oklahoma Supreme Court:

> To be an attorney of record the attorney's name must appear somewhere in the permanent records or files of the case or on the appearance docket. Tway v. Hartman, 75 P.2d 893 (Okla. 1942).

The unusual procedure employed by Plaintiff in attempting to serve Defendant within the one-year period prescribed by Rule 4(b) was improper and did not confer jurisdiction upon the District Court. The failure to file a correctly issued summons and to serve it timely upon Defendant was fatal to Plaintiff's cause of action and, therefore, Judge Durham was correct in granting Defendant's motion based upon Plaintiff's failure to comply

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with Rules 3 and 4 of the Utah Rules of Civil Procedure.

In addition, the Statute of Limitations then in effect clearly precluded an action being brought. Section 78-12-28 U.C.A. required an action for malpractice to be brought within two years. Paragraph 2 of Plaintiff's complaint claims that Defendant "negligently permitted during the summer of 1975 a severe infection to develop at the site of decubiti." (R., p. 2). Thus, the alleged time period for the malpractice would have been June, July, and August of 1975.

Even if it were assumed that the September 15, 1978 complaint and summons were valid the commencement of such action would not have been within two years of the alleged negligence as evidenced by the complaint itself. Furthermore, the fact that Defendant maintained a residence in the county and was therefore susceptible to service at all times did not toll the statute of limitations as claimed by Appellant. Woolf v. Gray, 158 P. 788 (Utah 1920); Cf. Snyder v. Clune, 390 P.2d 915 (Utah 1965).

Admittedly, Defendant's claim of the notice requirement under the Utah Health Care Malpractice Act is now moot in light of the 1979 amendment to Section 78-14-8 which took effect on April 1, 1979. At the time of the argument on Defendant's motion, however, this law was not in effect and this Court's decision in Vealey v. Clegg, 579 P.2d 919 (Utah 1978) was controlling and notice was, under that decision, a prerequisite to

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Plaintiff filing suit.

Finally, Defendant's Motion to Dismiss for Failure to Prosecute was addressed to the sound discretion of the trial court in its determination of the circumstances surrounding the conduct of the parties and other factors enumerated by this Court. Westinghouse Electric Supply Company v. Larsen Contractor, Inc. 544 P.2d 876 (1975); Brasher Motor and Finance Company v. Brown, 461 P.2d 464 (1969).

In the Judgment of Dismissal entered February 13, 1979 the court specifically noted that it considered the basis of Defendant's Motion and found "good cause existing." (R., p. 18). It is therefore to be assumed that the trial court found validity in the merits of Defendant's arguments regardless of Plaintiff's failure to appear at the hearing.

For the preceding reasons, therefore, the judgment of the trial court in granting Defendant's Motion for Dismissal was meritorious and further justified the subsequent refusal to set aside said judgment based upon Rule 60(b).

CONCLUSION

Plaintiff has appealed from an order denying relief from a judgment previously entered against him. Plaintiff in his brief has completely failed to justify the untimely request for Rule 60(b) relief or to explain how the trial court abused its discretion in concluding that sufficient cause did not exist to set aside the judgment.

Instead, Plaintiff in his brief has attempted to argue the

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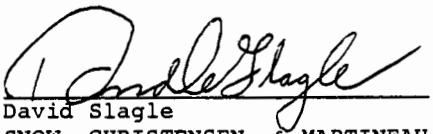
merits of the original Order of Dismissal which is merely collateral to the question now before this Court. Even so, however, Judge Durham correctly dismissed Plaintiff's complaint for failure to properly serve Defendant as required by the Utah Rules, for failing to initiate the action within the statute of limitations, and for failure to diligently prosecute Plaintiff's own case.

For these reasons, therefore, the lower court was correct in refusing to set aside the Order of Dismissal and the judgment of the lower court should therefore be affirmed.

Respectfully submitted,

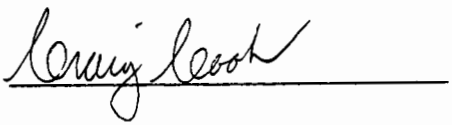


David Slagle
SNOW, CHRISTENSEN, & MARTINEAU

Attorney for Defendant

MAILING CERTIFICATE

I, Craig S. Cook, hereby certify that I mailed two copies of the preceding brief of Respondent to Appellant's attorney, Thom D. Roberts, 400 Ten Broadway Building, Salt Lake City, Utah 84101, postage prepaid, this 21st day of December, 1979.



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