

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Mitch Tomlinson,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20080467-CA
v.)	
)	F I L E D
Patrick Cardwell,)	(September 5, 2008)
)	
Defendant and Appellee.)	2008 UT App 326

Third District, Salt Lake Department, 060907233
The Honorable Glenn K. Iwasaki

Attorneys: Mitch Tomlinson, Salt Lake City, Appellant Pro Se
Michael E. Blue, Salt Lake City, for Appellee

Before Judges Thorne, Bench, and Orme.

PER CURIAM:

Mitch Tomlinson appeals the trial court's dismissal of his complaint for failure to prosecute. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review. Patrick Cardwell responded to the motion. Tomlinson did not file a proper response to the motion but filed an amended docketing statement, which we construe as his response.

Pursuant to Utah Rule of Civil Procedure 41(b), a defendant may move for dismissal of the action against him "for failure of the plaintiff to prosecute." Utah R. Civ. P. 41(b). In reviewing a trial court's dismissal of an action for failure to prosecute, appellate courts "do not disturb [a trial court's] decision absent an abuse of discretion and a likelihood that an injustice has occurred." Hartford Leasing Corp. v. State, 888 P.2d 694, 697 (Utah Ct. App. 1994). Furthermore, the "party challenging the dismissal bears the burden of offering a reasonable excuse for [his or her] lack of diligence." Rohan v. Boseman, 2002 UT App 109, ¶ 28, 46 P.3d 753 (alteration in original) (internal quotation marks omitted).

Tomlinson offered no reasonable excuse for his lack of diligence in prosecuting his claims, particularly after being given another sixty days by the trial court to pursue his claims. Tomlinson asserted that he was too busy to be able to pursue his case. He also asserted that he did not understand what he had to do within the sixty days to comply with the court's order. However, the fact is that he did nothing within the sixty days. He filed his motion to amend his complaint after the extension had expired. Tomlinson, as the initiating party, has the primary responsibility to move the case forward. See Hartford Leasing, 888 P.2d at 698 n.2. A plaintiff must prosecute his or her claims with due diligence "or accept the penalty of dismissal." Charlie Brown Constr. Co. v. Leisure Sports Inc., 740 P.2d 1368, 1370 (Utah Ct. App. 1987).

The trial court did not abuse its discretion in dismissing Tomlinson's complaint. Accordingly, the trial court's order is affirmed.

William A. Thorne Jr.,
Associate Presiding Judge

Russell W. Bench, Judge

Gregory K. Orme, Judge