

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Dean Wall,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellant,	)	
	)	Case No. 20070250-CA
v.	)	
	)	F I L E D
Kevin Olsen and Laree Olsen,	)	(June 7, 2007)
	)	
Defendants and Appellees.	)	<span style="border: 1px solid black; padding: 2px;">2007 UT App 200</span>

-----

Second District, Farmington Department, 050700554  
The Honorable Darwin C. Hansen

Attorneys: Dean Wall, Kaysville, Appellant Pro Se  
Dana T. Farmer, Ogden, for Appellees

-----

Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

Dean Wall appeals the dismissal, without prejudice, of his complaint for failure to prosecute. This case is before the court on a sua sponte motion for summary disposition.

On November 4, 2005, Wall filed a complaint naming Appellees Kevin and Laree Olsen as defendants. The complaint was accompanied by a motion and affidavit for waiver of court fees. Simultaneously with its filing, Wall purportedly served the Olsens by sending copies of the complaint by certified mail. The Olsens filed a motion to quash the improper service. On November 15, 2005, the court entered an order denying the motion seeking a waiver of the filing fee; accordingly, it took no action on the motion to quash service.

On February 6, 2007, the district court issued a notice of its intent to dismiss the case pursuant to rule 4-103(2) of the Utah Code of Judicial Administration for failure to prosecute the case. Rule 4-103(2) is merely a codification of the "inherent power of the trial court to dismiss a case sua sponte for lack of prosecution under Rule 41(b)" of the Utah Rules of Civil Procedure. Meadow Fresh Farms v. Utah State Univ. Dep't. of

Agric. & Applied Sci., 813 P.2d 1216, 1219 n.3 (Utah Ct. App. 1991). Rule 4-103(2) provides:

If a certificate of readiness for trial has not been served and filed within 330 days of the first answer, the clerk shall mail written notification to the parties stating that absent a showing of good cause by a date specified in the notification, the court shall dismiss the cause without prejudice for lack of prosecution.

Utah Code Jud. Admin. 4-103(2).

The notice in this case gave Wall the opportunity to file a written statement demonstrating that good cause existed for not dismissing the case. Instead, Wall submitted a default judgment, claiming that the complaint had been validly served and the Olsens had failed to answer. On March 6, 2007, the district court dismissed the complaint without prejudice for Wall's failure to pay the filing fee.

The district court's November 15, 2005 order denying Wall's request to waive the filing fee for his complaint stated that the motion and affidavit form was not complete, so the request did not include all the required information. However, without resolving the filing fee issue, Wall purportedly served a copy of the complaint by mailing, but did not serve a summons, as required by rule 4(b) of the Utah Rules of Civil Procedure. See Utah R. Civ. P. 4(b). Because the filing fee was neither waived by the court nor paid by Wall, any purported service of the complaint was ineffective. It was procedurally inappropriate to seek a default judgment because Wall was not entitled to judgment on the complaint due to his failure to pay the filing fee or to obtain a waiver within the year after the complaint's filing.

The district court did not err in dismissing the case without prejudice for failure to prosecute.

---

Pamela T. Greenwood,  
Associate Presiding Judge

---

Judith M. Billings, Judge

---

James Z. Davis, Judge