

IN THE UTAH COURT OF APPEALS

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| D. Bruce Whited, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Petitioner and Appellant, |) | |
| |) | Case No. 20060442-CA |
| v. |) | |
| |) | |
| Corporation of the Presiding |) | F I L E D |
| Bishop of the Church of Jesus |) | (May 17, 2007) |
| Christ of Latter-day Saints, a |) | |
| Utah corporation sole; and |) | 2007 UT App 167 |
| John Does 1 through 10, |) | |
| |) | |
| Respondents and Appellees. |) | |

Fifth District, St. George Department, 030501769
The Honorable Eric Ludlow

Attorneys: Phillip E. Lowry, Provo, for Appellant
Eric C. Olson, Salt Lake City, for Appellees

Before Judges Greenwood, Billings, and Orme.

BILLINGS, Judge:

Petitioner D. Bruce Whited appeals the trial court's denial of his motion to amend his complaint to add additional parties. We affirm.

We review a trial court's denial of a motion to amend pleadings for abuse of discretion. See Kasco Servs. Corp. v. Benson, 831 P.2d 86, 92 (Utah 1992). Rule 15 of the Utah Rules of Civil Procedure governs motions to amend pleadings and states that "leave [to amend a pleading] shall be freely given when justice so requires." Utah R. Civ. P. 15(a). "To properly move for leave to amend a complaint, a litigant must file a motion that 'shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.'" Holmes Dev. L.L.C. v. Cook, 2002 UT 38, ¶57, 48 P.3d 895 (quoting Utah R. Civ. P. 7(b)(1)). Moreover, "a motion for leave to amend must be accompanied by a memorandum of points and authorities in support, and by a proposed amended complaint." Id. (citation omitted). The requirement of particularity "assur[es] that a court can be appraised of the basis of a motion

and rule upon it with a proper understanding of the motion." Id. at ¶58. The requirement allows "the court [to] ascertain what changes are sought and [to] determine whether the motion should be granted and whether justice so requires the amendment of a pleading." Id. In ruling on motions to amend, Utah courts focus primarily on three factors: "'the timeliness of the motion; the justification given by the movant for the delay; and the resulting prejudice to the responding party.'" Kelly v. Hard Money Funding, Inc., 2004 UT App 44, ¶26, 87 P.3d 734 (quoting Regional Sales Agency, Inc. v. Reichert, 784 P.2d 1210, 1216 (Utah Ct. App. 1989)).

Here, Petitioner's motion to amend his complaint did not state with particularity the reasons why granting leave to amend was proper; in fact, Petitioner's motion gave no reasons in support of amendment. Further, Petitioner's supporting memorandum simply stated that amendments should be liberally granted and that the amended complaint would add parties with an interest in the litigation. Petitioner's statements in his motion to amend and supporting memorandum were insufficient to provide the trial court with a proper understanding of the grounds for the motion and to allow the trial court to "determine whether the motion should be granted and whether justice so requires the amendment," Holmes, 2002 UT 38 at ¶58. See id. at ¶59 (concluding that movant failed to meet particularity requirement when it merely cited rule 15(a) and stated that leave to amend should be freely given). Thus, because Petitioner's motion to amend failed to sufficiently particularize the grounds for why the lower court should grant him leave to amend, the trial court was within its discretion to deny the motion. See id. (holding that it is within a trial court's discretion to deny a motion to amend a complaint where the party filing the motion failed to "state with particularity the grounds" for amendment (quoting Utah R. Civ. P. 7(b)(1))).

Notably, Petitioner argues that the trial court abused its discretion when it did not provide reasoning in support of its denial of the motion to amend. The Utah Supreme Court has held, however, that when the reasons for denying amendment are apparent, the trial court does not necessarily need to explain its reasoning. See Aurora Credit Servs., Inc. v. Liberty W. Dev., Inc., 970 P.2d 1273, 1282 (Utah 1998). Since Petitioner provided no particularized reason for why the trial court should grant him leave to amend, the trial court did not have to explain the reasons behind its denial of the motion. See id.

Even assuming that Petitioner had provided a particularized reason for allowing amendment of the complaint, it is far from clear whether the amendment would have been allowed. Petitioner had constructive notice of the proposed additional parties before

litigation began and had actual notice of the proposed additional parties eight months previous to his proposed amendment. See Turville v. J&J Props., L.C., 2006 UT App 305, ¶35, 145 P.3d 1146 (holding that trial court did not abuse its discretion in denying motion to amend where the amending party "knew or should have known . . . about the additional parties" it sought to add long before filing motion (quotations and citation omitted)). Additionally, Petitioner brought his motion to amend approximately two and a half years after the litigation in this case had commenced. As earlier noted, the court may consider timeliness in deciding whether to grant a motion to amend. See Kelly, 2004 UT App 44 at ¶30.

We affirm.¹

Judith M. Billings, Judge

WE CONCUR:

Pamela T. Greenwood,
Associate Presiding Judge

Gregory K. Orme, Judge

¹On appeal, Petitioner also argues that we should consider the trial court's earlier denial of Petitioner's motion to compel discovery because the trial court must have relied on that denial when it denied Petitioner's motion to amend. However, because we conclude that the trial court did not abuse its discretion in denying Petitioner's motion to amend for procedural inadequacies, Petitioner's arguments as to the trial court's reliance on the motion to compel are irrelevant.