

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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SHELLEY FENWICK,  
Plaintiff,

vs.

NATIONWIDE MUTUAL INSURANCE  
COMPANY and ABC COMPANIES,  
Defendants.

MEMORANDUM DECISION AND  
ORDER GRANTING DEFENDANT  
NATIONWIDE MUTUAL  
INSURANCE COMPANY'S  
MOTION TO DISMISS FOR LACK  
OF PROSECUTION

Case No. 2:09-CV-572 TS

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This matter is before the Court on Defendant Nationwide Mutual Insurance Company's ("Nationwide") Motion to Dismiss for Failure to Prosecute. Defendants ABC Companies are as yet unidentified companies.

Rule 41 of the Federal Rules of Civil Procedure states: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."<sup>1</sup> Such dismissals are with prejudice unless they are based on "lack of

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<sup>1</sup>FED.R.CIV.PRO. 41(b).

jurisdiction, improper venue, or failure to join a party under Rule 19.”<sup>2</sup>

On August 27, 2010, Plaintiff Shelly Fenwick’s counsel filed a motion to withdraw. The Court granted the Motion on September 2, 2010, and ordered Fenwick to notify the Court within twenty days “regarding either new counsel or her intent to proceed pro se.”<sup>3</sup> The court mailed a copy of its order to Fenwick on the day it was issued. Fenwick has failed to comply with the Court’s Order by not notifying the Court of her intention to hire new counsel or proceed pro se.

On August 27, 2010, Nationwide filed a Motion for Summary Judgment. Fenwick has not responded to this Motion. On September 23, 2010, Nationwide filed a Motion to Dismiss for Lack of Prosecution and a Memorandum in Support. Fenwick has also not responded to this Motion. In October 2010 Nationwide filed a Request to Submit for Decision its Motion for Summary Judgment and a Request to Submit for Decision its Motion to Dismiss for Lack of Prosecution. All of these filings, except the Motion for Summary Judgment, were served on Fenwick at the address on file with the Court via First Class U.S. Mail.

In sum, Fenwick has not responded to any filings since her counsel withdrew, nor has she complied with the Court Order that she either obtain counsel or notify the Court of her intent to proceed pro se. The Court finds that she has failed to pursue this matter and that dismissal is proper under Rule 41(b). It is therefore

ORDERED that Nationwide’s Motion to Dismiss for Failure to Prosecute (Docket No. 33) is GRANTED. The claims against Nationwide are dismissed with prejudice and the claims

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<sup>2</sup>*Id.*

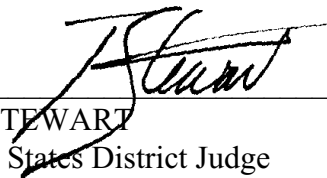
<sup>3</sup>Docket No. 31.

against the unidentified ABC Companies are dismissed without prejudice. It is further

ORDERED that Defendant's Motion for Summary Judgment (Docket No. 28) is DENIED AS MOOT. The Clerk of the Court is instructed to close this case.

DATED December 2, 2010.

BY THE COURT:

  
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TED STEWART  
United States District Judge