

IN THE UTAH COURT OF APPEALS

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Capital One Bank, N.A.,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20090548-CA
v.)	
)	F I L E D
Scott B. Withers,)	(September 24, 2009)
)	
Defendant and Appellee.)	2009 UT App 275

Third District, West Jordan Department, 070414240
The Honorable Robert Adkins

Attorneys: Gregory M. Constantino, West Jordan, for Appellant
Scott B. Withers, West Jordan, Appellee Pro se

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Capital One Bank, N.A. (Capital One) appeals the district court's order denying its rule 60(b) motion to set aside the district court's March 2, 2009 order. This matter is before the court on a sua sponte motion for summary disposition. We affirm.

A ruling on a rule 60(b) motion is a separate, appealable order. See Amica Mut. Ins. Co. v. Shettler, 768 P.2d 950, 970 (Utah Ct. App. 1989). An appeal from a rule 60(b) motion is narrow in scope and addresses only the propriety of the denial or grant of relief from a judgment or order. See Franklin Covey Client Sales, Inc. v. Melvin, 2000 UT App 110, ¶ 19, 2 P.3d 451. An appeal from a ruling on a rule 60(b) motion does not generally reach the merits of the underlying order from which relief was sought or provide a basis for this court to review the legal issues previously adjudicated by the district court. See id. ¶ 23. A denial of a motion to set aside an order under rule 60(b) is ordinarily reversed only for an abuse of discretion. See Jackson Constr. Co. v. Marrs, 2004 UT 89, ¶ 8, 100 P.3d 1211. However, jurisdictional issues present a question of law that we review for correctness, and we do not defer to the district court. See id.

Capital One first asserts that the district court improperly allowed a collateral attack on the underlying judgment during a postjudgment hearing regarding an objection to garnishment. Capital One also asserts that the district court erred by ruling on Capital One's rule 60(b) motion without first ascertaining whether Capital One had been served with a copy of Withers's objection to its rule 60(b) motion. It is apparent from the record that Capital One did not properly preserve these issues.

As a general rule, "claims not raised before the trial court may not be raised on appeal." State v. Holgate, 2000 UT 74, ¶ 11, 10 P.3d 346. This preservation rule applies to "every claim, including constitutional questions, unless a defendant can demonstrate that 'exceptional circumstances' exist or 'plain error' occurred." Id. To preserve the issue for appeal, a party "must enter an objection on the record that is both timely and specific." State v. Rangel, 866 P.2d 607, 611 (Utah Ct. App. 1993). "The objection must 'be specific enough to give the trial court notice of the very error' of which [the party] complains." State v. Bryant, 965 P.2d 539, 546 (Utah Ct. App. 1998). Capital One does not demonstrate that these issues were preserved or how they meet an exception to the preservation rule. Thus, we decline to address them.

Capital One next asserts that the district court held the March 2, 2009 hearing without jurisdiction because the garnished funds had been tendered to Capital One, and once the funds were transferred, the court lost jurisdiction over them. Capital One does not provide any legal authority to support its assertion that the district court is divested of jurisdiction over the garnished funds once the funds have been transferred from the garnishee.

Capital One also asserts that the district court erred by denying its rule 60(b) motion because the court lacked jurisdiction once Capital One filed its satisfaction of judgment. Capital One has failed to demonstrate that a satisfaction of judgment is a jurisdictional document that divests the court of jurisdiction.

Capital One further asserts that Withers's rule 64D request for a hearing was untimely, which divested the court of jurisdiction to hold the March 2, 2009 hearing. However, the record demonstrates that the district court excused Withers's untimely request for a hearing because Withers demonstrated excusable neglect pursuant to rule 6(b) of the Utah Rules of Civil Procedure. Under rule 6(b), "the district court has discretion to enlarge the time after the time for doing the act has expired 'where the failure to act was due to excusable neglect.'" Stoddard v. Smith, 2001 UT 47, ¶ 22, 27 P.3d 546.

Absent a demonstration that the district court abused its discretion, we affirm the district court's decision. See id. Capital One has not demonstrated that the district court abused its discretion in determining that Withers's request for a hearing was timely due to excusable neglect.

Capital One next asserts that the district court held the March 2, 2009 hearing without providing notice to Capital One. However, the district court made the factual determination that "[n]otice of the [March 2, 2009] hearing was hand delivered to Mr. Constantino's box at the West Jordan Courthouse by the clerk of the Court." We review the district court's factual determinations for clear error. See Nexmed, Inc. v. Mann, 2005 UT App 431, ¶ 10, 124 P.3d 252. Capital One has not demonstrated that the district court's determination that notice of the hearing was provided to Capital One was clearly erroneous.

Finally, Capital One asserts that Scott B. Withers failed to make a showing that he was entitled to relief under rule 64D. However, the record demonstrates that the garnishee released the garnished funds prematurely and that the district court concluded that the garnishment had been improperly made. As explained above, the district court is afforded broad discretion in ruling on a rule 60(b) motion, and its determinations will not be disturbed absent a showing of an abuse of its discretion. See Jackson Constr. Co., 2004 UT 89, ¶ 8. Capital One has not demonstrated that the district court abused its discretion in determining that the funds were improperly garnished and that the funds should be returned to Withers.

Accordingly, the district court's May 21, 2009 order denying Capital One's rule 60(b) motion is affirmed.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge