IN THE UTAH COURT OF APPEALS

----ooOoo----

In the matter of the Estate of Lowell Dean Carlsen, Deceased. _____ Paul Kent Carlsen, Petitioner and Appellee, and Bruce Carlsen and Terry B. Carlsen, Heirs and Appellees, v. D. Craig Carlsen, Heir and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20081063-CA F I L E D (April 2, 2009) 2009 UT App 86

First District, Logan Department, 073100007
The Honorable Clint S. Judkins

Attorneys: D. Craig Carlsen, Logan, Appellant Pro Se
Stephen W. Jewell, Logan, for Appellee Bruce Carlsen
Terry B. Carlsen, Logan, Appellee Pro Se
Paul Kent Carlsen, Henderson, Nevada, Appellee Pro Se

Before Judges Greenwood, Orme, and Davis.

PER CURIAM:

D. Craig Carlsen appeals the district court's denial of his motion for relief under rule 60(b) of the Utah Rules of Civil Procedure. This matter is before the court on cross motions for summary disposition. We affirm.

Craig first asserts that the district court erred in concluding that his rule 60(b) motion was untimely as to several claims. The district court entered its final order approving and enforcing the parties' settlement on June 11, 2008. Craig filed

his motion for relief under rule 60(b) on September 12, 2008. Craig acknowledges that his motion was filed three months and one day after the final order of the court. However, he argues that under rule 6(e) of the Utah Rules of Civil Procedure he was entitled to an additional three days to file his motion because the final order was mailed to him. See Utah R. Civ. P. 6(e).

Rule 60(b) states in part that any such motion:

> shall be made within a reasonable time and for reasons (1) [mistake, inadvertence, surprise, or excusable neglect], (2) [newly discovered evidence], or (3) [fraud, misrepresentation or other misconduct of an adverse party], not more than 3 months after the judgment, order, or proceeding was entered or taken.

Utah R. Civ. P. 60(b). A judgment is "complete and shall be deemed entered for all purposes . . . when the same is signed and filed." Id. R. 58A(c) (emphasis added). Rule 6(e), in turn, provides that "[w]henever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the end of the prescribed period . . . ." Id. R. 6(e) (emphasis added). Thus, rule 6(e) is applicable only when time would be measured from the service of a document, rather than from entry of an order. See 1 James Moore et al., Moore's Federal Practice § 6.053[3], at 6-35 (3d ed. 1998) ("Rule 6(e) does not apply to time periods that begin with the filing in court of a judgment or order."). As such, because the time requirement in rule 60(b) runs from the date of entry of the judgment as opposed to service of a notice or other paper, rule 6(e) is inapplicable and did not operate to extend the deadline for filing the motion. See In re Bundy's Estate, 241 P.2d 462, 467 (Utah 1952) (denying relief under rule 60(b)(1) even though clerk of court failed to mail notice of a default judgment because "under rule 58A(c) a judgment is complete and is deemed entered for all purposes when the same is signed and filed, not when notice is received from the parties"). Therefore, Craig's motion was one day late, making it untimely as to the claims he made based upon fraud, mistake, and surprise.

Craig also alleges that the district court erred in denying his motion for 60(b) relief because the district court did not have jurisdiction over the matter. In so asserting, Craig seems to argue that the district court lacked jurisdiction over both a trust at issue between the parties as well as Bruce and Terry Carlsen. However, the record demonstrates that Bruce and Terry filed a Petition for Removal of Personal Representative and

Trustee. Further, Craig filed two similar petitions. These petitions brought questions concerning the trustee and trust under the jurisdiction of the court. Similarly, Bruce and Terry submitted to the jurisdiction of the court by filing such a petition and by taking an active part in the litigation of this case. Accordingly, there is no question that the district court had jurisdiction over both the subject matter and the parties to approve and enforce the parties' settlement agreement reached during a mediation.

Finally, Craig also argues on appeal that the district court erred in approving and enforcing the settlement because it was not in writing. See Reese v. Tingey Constr., 2008 UT 7, ¶ 15, 177 P.3d 605 (requiring written agreement to enforce mediation settlements). However, Craig did not raise this issue in his 60(b) motion. Accordingly, the issue is not appropriately preserved for review. See State v. 756 N. Colo. St., 2004 UT App 232, ¶ 12, 95 P.3d 1211 (refusing to review argument by an appellant that was not included in his rule 60(b) motion to the district court). However, even if the issue had been preserved for our review, we note that Reese expressly states that "a recording in which the parties affirmatively state what constitutes their settlement [satisfies] this requirement [for a written memorial]." Reese, 2008 UT 7, ¶ 15 n.6. Here, at the conclusion of the mediation, all parties set forth the terms of their settlement on the record and each party affirmatively agreed to its terms. Thus, the record made of the settlement satisfies the Reese requirement.

Affirmed.[1]

_____
Pamela T. Greenwood,
Presiding Judge

_____
Gregory K. Orme, Judge

_____
James Z. Davis, Judge

---

[1]Craig filed a motion to strike portions of the motion for summary disposition filed by Paul Kent Carlsen. Because of the court's disposition on the merits of the appeal, any ruling on the motion is moot. However, we note that for purposes of the cross motions for summary disposition, this court disregarded the portions of Paul Kent Carlsen's motion objected to by Craig.