

IN THE UTAH COURT OF APPEALS

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Earl L. Cline II,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20070034-CA
v.)	
)	F I L E D
)	(April 5, 2007)
State of Utah, Division of)	
Child and Family Services,)	
Third District Court,)	2007 UT App 111
Hon. Robert K. Hilder,)	
Administrative Law)	
Judge Sheleigh Harding,)	
Anthony Ferdon, Michelle)	
Blomquist, Diane Moore,)	
Chris Forsyth, Robert Banta,)	
and Mayla W. Slack, et al.,)	
)	
Defendants and Appellees.)	

Fourth District, Provo Department, 050401710
The Honorable Fred D. Howard

Attorneys: Earl L. Cline II, Salt Lake City, Appellant Pro Se
Mark L. Shurtleff and J. Clifford Petersen, Salt Lake
City, for Appellee

Before Judges Billings, Orme, and Thorne.

PER CURIAM:

Earl L. Cline II appeals the order dismissing with prejudice all claims against Defendants State of Utah, Division of Child and Family Services, Third District Court, Judge Robert K. Hilder, Administrative Law Judge Sheleigh Harding, Anthony Ferdon, Michelle Blomquist, Diane Moore, Chris Forsyth, Robert Banta, and Mayla W. Slack (the State Defendants), with the exception of Cline's claim against Forsyth in her individual capacity for alleged fraud arising out of her second investigation, which was dismissed without prejudice to allow Cline to pursue it in a separate case pending in the Third District Court "without res judicata effect." Cline v. State, 2005 UT App 498, 142 P.3d 127 (affirming dismissal of all claims except claim for alleged fraud by Forsyth in her individual capacity).

On August 18, 2006, the district court amended its original dismissal order to strike references to improper service as a ground for dismissal, but granted dismissal on other grounds. The district court also granted the State Defendants' motion to certify the dismissal order as final for appeal, pursuant to rule 54(b) of the Utah Rules of Civil Procedure. On September 1, 2006, Cline filed a motion captioned as a Motion to Reconsider, which cited provisions of rule 59(a) of the Utah Rules of Civil Procedure in its body. However, Cline did not analyze or apply any of the cited provisions, and his affidavit claimed only that some State Defendants had not yet been personally served and, therefore, the court could not dismiss them. After entry of a November 27, 2006 Order Denying Motion to Reconsider, Cline appealed on December 26, 2006, over four months after the dismissal.

The Utah Supreme Court's opinion in Gillett v. Price, 2006 UT 24, 135 P.3d 861, rejected "the practice of filing postjudgment motions to reconsider" and clarified that "future filings of postjudgment motions to reconsider will not toll the time for appeal." Id. at ¶1. The supreme court held that "regardless of the motion's substance, postjudgment motions to reconsider and other similarly titled motions will not toll the time for appeal because they are not recognized by our rules." Id. at ¶7. "Hereafter, when a party seeks relief from a judgment, it must turn to the rules to determine whether relief exists, and if so, direct the court to the specific relief available." Id. at ¶8. The supreme court repudiated case law "treating motions to reconsider as rule-sanctioned motions based on the substance of the motion." Id.

Cline invoked subdivisions of rule 59 of the Utah Rules of Civil Procedure, but did not analyze or apply the rule. Mere recitation of rule 59 does not convert a motion to reconsider into a legitimate motion for new trial. Furthermore, Cline contended only that the district court erred in dismissing State Defendants who had not yet been personally served. Ironically, he alleged in an earlier motion for relief from the judgment under rule 60(b) of the Utah Rules of Civil Procedure that counsel for the State Defendants had waived any objection to service and conceded jurisdiction. In response, the district court amended its dismissal order to omit improper service of process as a ground for dismissal and based its dismissal only on the remaining grounds urged by the State Defendants. Therefore, at the time he filed the motion to reconsider, Cline was clearly aware that the State Defendants had waived any challenge to personal jurisdiction and that the court had ruled that it had jurisdiction. Nevertheless, Cline reversed his position and

argued that the district court lacked jurisdiction over some State Defendants. In addition to being without merit, this claim is nothing more than a challenge to the district court's reasoning and an improper motion to reconsider a final judgment, which does not toll the time for appeal.

To the extent that Cline contends he has been denied his right to appeal by a change in judicial policy regarding motions to reconsider, his position is also without merit. As clarified in Gillett, motions to reconsider final judgments have never been recognized by the procedural rules. See id. at ¶¶1,6. Gillett was issued several months before Cline filed his motion to reconsider. Cline is a frequent litigant at the district court and appellate court levels and is appropriately charged with knowledge of applicable procedures. See Lundahl v. Quinn, 2003 UT 11, ¶4, 67 P.3d 1000 ("When an individual avails [him]self of the judicial machinery as a matter of routine, special leniency on the basis of pro se status is manifestly inappropriate.").

Finally, the claim that Utah courts may not apply state procedural rules governing motions to reconsider to a case that alleges causes of action under federal law is without merit. See Winkels v. George A. Hormel & Co., 874 F.2d 567, 568-70 (8th Cir. 1989) (applying the general rule that state procedural rules govern cases originating in state court even if the cause of action arises from federal law); see also Dalebout v. Union Pacific R.R. Co., 1999 UT App 151, ¶18, 980 P.2d 1194 (stating that Federal Employers' Liability Act cases are subject to state procedural rules, although federal law governs substantive issues).

We dismiss the appeal for lack of jurisdiction because it was not filed within thirty days of entry of the dismissal order and the time for appeal was not tolled by the motion to reconsider.

Judith M. Billings, Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge