

IN THE UTAH COURT OF APPEALS

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John M. Duran,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20080658-CA
v.)	
)	
Department of Technology)	F I L E D
Services, Career Service)	(October 30, 2008)
Review Board, Department of)	
Administrative Services,)	2008 UT App 397
Division of Risk Management,)	
Kimberly K. Hood, Roger)	
Livingston, and John and Jane)	
Does 1-20,)	
)	
Defendants and Appellees.)	

Third District, Salt Lake Department, 080909966
The Honorable Denise P. Lindberg

Attorneys: John M. Duran, Kearns, Appellant Pro Se
Mark L. Shurtleff and Peggy E. Stone, Salt Lake City,
for Appellees

Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

John M. Duran appeals the district court's order entered July 8, 2008. This matter is before the court on its own motion for summary disposition.

Duran asserts that the district court erred by denying his petition for extraordinary relief filed pursuant to rule 65B of the Utah Rules of Civil Procedure. Rule 65B(d)(2)(A) provides that extraordinary relief may be granted where an administrative agency has abused its discretion. See Utah R. Civ. P. 65B(d)(2)(A). A party seeking extraordinary relief is not necessarily entitled to receive it, even if he or she demonstrates that the administrative agency abused its discretion. See State v. Barrett, 2005 UT 88, ¶ 23, 127 P.3d 683. "Whether relief is ultimately granted is left to the sound discretion of the court hearing the petition." Id.

Duran filed his petition in the district court wherein he asserted that Risk Management abused its discretion by denying his request for appointed counsel to represent him in appealing his termination from state employment. Duran bases this assertion on Utah Code section 63-30d-902.¹ This section provides that a government entity shall defend any action brought against a state employee arising from an act or omission "occurring during the performance of the employee's duties; within the scope of the employee's employment; or under color of authority." Utah Code Ann. § 63G-7-902(1) (Supp. 2008). However, the obligation to provide defense counsel does not apply to situations where the employee is determined to have acted through "willful misconduct." Id. § 63G-7-902(3)(b); see also Utah Code Ann. § 63G-7-202(3)(c)(I) (Supp. 2008).

Even if this court were to accept Duran's argument that section 63G-7-902 is applicable to provide for his defense, Duran would not have been entitled to appointed counsel based on the specific facts of his case. The record demonstrates that Duran was terminated for willful misconduct. Utah Code section 63G-7-902 is inapplicable in situations where a state employee has engaged in willful misconduct. See id. § 63G-7-902(3)(b). Thus, the State had no obligation to provide Duran with defense counsel.² Therefore, the district court did not abuse its discretion by dismissing Duran's petition for extraordinary relief.

Affirmed.

Pamela T. Greenwood,
Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge

¹This section has been renumbered as Utah Code section 63G-7-902.

²Because we determine that Duran's willful misconduct would render him ineligible for state-provided counsel, we need not address the State's argument that section 63G-7-902 relates only to situations where an action is brought by a third party.