

IN THE UTAH COURT OF APPEALS

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Robert Finch,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20060604-CA
v.)	
)	F I L E D
State of Utah,)	(October 13, 2006)
)	
Respondent and Appellee.)	2006 UT App 413

Third District, Tooele Department, 060300116
The Honorable Randall N. Skanchy

Attorneys: Robert Finch, Gunnison, Appellant Pro Se

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

Appellant Robert Finch appeals the denial of a motion to set aside the order denying his petition for extraordinary relief. The appeal is before the court on a sua sponte motion for summary disposition.

In response to the sua sponte motion for summary disposition, Finch states that he is not pursuing a direct appeal from the order denying his petition for post-conviction relief. He incorrectly contends that a timely motion under rule 60(b) of the Utah Rules of Civil Procedure extends the time for appeal from the underlying judgment. Although an order denying a rule 60(b) motion is a final appealable order itself, a rule 60(b) motion is not one of the motions enumerated in rule 4(b) of the Utah Rules of Appellate Procedure, and it does not extend the time for appeal from the underlying judgment. See Utah R. App. P. 4(b). Accordingly, this appeal is limited to a determination of whether the district court abused its discretion in denying the motion to set aside the judgment under rule 60(b)(1). See Franklin Covey Client Sales, Inc. v. Melvin, 2000 UT App 110, ¶19, 2 P.3d 451 ("An appeal of a [r]ule 60(b) order addresses only the propriety of the denial or grant of relief [and does not] reach the merits of the underlying judgment from which relief is sought."). We reverse the ruling on a rule 60(b)

motion only when we find an abuse of discretion. See id. at ¶9; Birch v. Birch, 771 P.2d 1114, 1117 (Utah Ct. App. 1989) ("The trial court is afforded broad discretion in ruling on a motion for relief from judgment under Utah R. Civ. P. 60(b), and its determination will not be disturbed absent an abuse of discretion.").

The district court mailed the order denying post-conviction relief to Finch at the address he provided with his petition. The petition actually arrived at the Gunnison prison, where it was rejected for an insufficient address. The basis for its return is not noted in the record. Assuming that the rejection was due to the omission of the inmate number or other deficiency in the address, remedying this omission was within Finch's control and responsibility. The first document on which Finch included his inmate number was the letter filed with the court on March 27, 2006, inquiring whether the petition for post-conviction relief had been determined. The assertion that the court was required to take additional steps to correct errors in the address provided by Finch is without merit. Similarly, the assertion that the court delegated service of Finch's motion is also without merit. The court provided a copy of the decision by mailing it to the address Finch provided.

This appeal is limited to determining whether the district court abused its discretion by denying a rule 60(b) motion. The record reflects that the district court promptly mailed a copy of the decision to Finch at the post office box for the prison. The prison received the letter, but it was rejected, presumably due to the omission of an inmate number. The rule 60(b) motion, as framed by Finch, faults the prison for rejecting his mail and the court for failing to take further steps to accomplish service. Nowhere in the rule 60(b) motion did Finch acknowledge that his own failure to provide a sufficient address constituted a mistake or excusable neglect, and that assertion was not before the district court nor is it before this court.

We affirm the order denying relief from the order denying post-conviction relief because the district court did not abuse its discretion in denying the motion.

Judith M. Billings, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge