

IN THE UTAH COURT OF APPEALS

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Shari D. Harper,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20070441-CA
v.)	
)	F I L E D
Kenneth Burton and Cragun,)	(September 7, 2007)
Burton & Bushell, P.C.,)	
)	2007 UT App 294
Defendants and Appellees.)	

Second District, Ogden Department, 060906433
The Honorable Ernest W. Jones

Attorneys: Shari D. Harper, Huntsville, Appellant Pro Se
Kenneth W. Burton, Ogden, for Appellees

Before Judges McHugh, Orme, and Thorne.

PER CURIAM:

Shari D. Harper appeals the denial of her motion brought under rules 59 and 60 of the Utah Rules of Civil Procedure. This case is before the court on a sua sponte motion for summary affirmance. In a late response, Harper seeks a further extension of the time to respond. We deny the request for extension and consider her claims as presented in the record, her response to our motion, and her docketing statement.

On November 8, 2006, Harper filed a complaint against Defendants generally alleging slander per se and seeking damages. On November 17, 2006, Defendants moved to dismiss the complaint for failure to state a claim because it did not set out the statements that she alleged to be slander per se. On December 12, 2006, the district court granted the motion to dismiss. Harper filed her first rule 59 motion, claiming that the amended complaint she filed on December 6 superceded the original complaint and rendered the motion to dismiss moot. She further claimed that she was entitled to a default judgment on the amended complaint.

In a March 12, 2007 decision, the district court denied Harper's rule 59 motion, noting that the amended complaint was

filed while a motion to dismiss was under advisement and that because the motion to dismiss was granted, she could not file an amended complaint. On March 28, 2007, Harper filed another motion under rule 59 and rule 60 of the Utah Rules of Civil Procedure. The district court denied Harper's motion, and this appeal followed.

Harper appeals the May 8, 2007 decision denying her post-judgment motion, as well as "all previous orders." A timely post-judgment motion under rule 59 of the Utah Rules of Civil Procedure will toll the time for an appeal from the final judgment. See Utah R. App. P. 4(b). Under rule 59, a motion for new trial must be served not later than ten days after entry of the judgment. See Utah R. App. P. 59(b). The final judgment of dismissal was entered on March 12, 2007, and any motion for new trial must have been served no later than March 26, 2007.¹ Because Harper's motion was not served until March 28, 2007, it was not timely and did not toll the time for an appeal from the March 12, 2007 dismissal or any previous orders. Accordingly, this appeal is limited to review of the denial of the alternative motion to set aside the judgment made under rule 60(b) of the Utah Rules of Civil Procedure.

Harper's post-judgment motion argued no specific provision of rule 60(b) as the basis to set aside the judgment. Instead, the motion simply seeks reconsideration of the dismissal of her complaint. See Gillett v. Price, 2006 UT 24, ¶6, 135 P.3d 861 ("[P]ostjudgment motions to reconsider are not recognized anywhere in either the Utah Rules of Appellate Procedure or the Utah Rules of Civil Procedure."). Even if her arguments are considered, they lack merit. Harper claimed that Kenneth Burton could not represent Defendant Cragun, Burton & Bushell. Burton is a licensed attorney; therefore, he could represent the corporation in which he also serves as an officer. The claim that the notice to submit the motion to dismiss was premature is not a basis to set aside the dismissal. Harper filed a response that was considered by the court before it made its ruling, as clearly stated in the memorandum decision dated December 12, 2006.

After Harper filed her complaint, the Defendants elected to file a motion to dismiss under rule 12(b)(6) of the Utah Rules of Civil Procedure in lieu of an answer. See Utah R. Civ. P. 12(b)(6) (allowing the defense of failure to state a claim upon

¹The time for filing is calculated by considering working days, but Harper is not allowed an additional three days because the time for filing is triggered by entry of the judgment and not by service of a notice or other paper. See Utah R. Civ. P. 6(e).

which relief can be granted to be asserted by motion). Filing that motion tolled the time for any further response to the complaint until the district court ruled on the motion. See Utah R. Civ. P. 12(a) (stating that filing of a motion under the rule alters the time for response to a complaint). Because the motion to dismiss the case was later granted, Harper's amended complaint was without effect. Defendants were not required to answer the amended complaint filed in the dismissed case, and they were not in default. Harper was not entitled to a default judgment.

Affirmed.

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge