

IN THE UTAH COURT OF APPEALS

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| Julian Dean Hatch, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Plaintiff and Appellant, |) | |
| |) | Case No. 20090020-CA |
| v. |) | |
| |) | F I L E D |
| Larry D. Davis, |) | (October 29, 2009) |
| |) | |
| Defendant and Appellee. |) | 2009 UT App 310 |

Sixth District, Panguitch Department, 030600013
The Honorable David L. Mower
The Honorable James L. Shumate

Attorneys: Budge W. Call, Salt Lake City, for Appellant
James C. Bradshaw, Salt Lake City, for Appellee

Before Judges Thorne, Bench, and Orme.

THORNE, Judge:

Julian Dean Hatch appeals from the district court's order dismissing with prejudice his complaint pursuant to rule 4-103(2) of the Utah Rules of Judicial Administration for failure to prosecute.¹ Hatch also appeals from the district court's order denying his change of venue motion.² We affirm in part, and reverse and remand in part.

Hatch argues that the district court violated rule 4-103(2) by dismissing his complaint with prejudice and without giving him an opportunity to demonstrate that good cause existed for not dismissing the case. Here, the district court issued a notice of its intent to dismiss the case pursuant to rule 4-103(2) for failure to prosecute the case.³ The notice gave Hatch twenty

¹Judge David L. Mower ruled on Hatch's motion to dismiss.

²Judge James L. Shumate ruled on Hatch's change of venue motion.

³We note that the record does not contain a copy of the
(continued...)

days to file a written statement demonstrating that good cause existed for not dismissing the case. The next day, the district court entered an order dismissing the matter with prejudice and on the merits pursuant to rule 4-103(2).

Rule 4-103(2) provides for dismissal of a complaint without prejudice "absent a showing of good cause by a date specified in the notification." See Utah R. Jud. Admin. 4-103(2) ("If a certificate of readiness for trial has not been served and filed within 330 days of the first answer, the clerk shall mail written notification to the parties stating that absent a showing of good cause by a date specified in the notification, the court shall dismiss the case without prejudice for lack of prosecution."). In the present case, the district court erred by failing to give Hatch the time allotted in the notice to show good cause why the complaint should not be dismissed. See Preuss v. Wilkerson, 858 P.2d 1362, 1363 (Utah 1993) (per curiam) ("Implicit in . . . [the] language [of rule 4-103] is the concept that the plaintiff should have notice of the court's consideration of dismissal before a matter is dismissed and also should have an opportunity to show good cause why this should not occur."). Because Hatch was not given an opportunity to be heard pursuant to rule 4-103(2), we conclude that the dismissal was improper.⁴ As a result, we reverse the order dismissing the complaint and remand for further proceedings consistent with this decision and in compliance with rule 4-103(2).

Hatch next argues that the district court erred by denying his motion to change venue because the court denied the motion without mentioning any of the undisputed facts contained in Hatch's affidavit and failed to consider the change of venue factors outlined in State v. James, 767 P.2d 549, 552 (Utah 1989). In this case, Hatch filed his motion to change venue with his affidavit attached. About seven days later, Hatch filed an amended motion for change of venue. The district court entered an order denying Hatch's amended motion and its predecessor motion "for the reason that, absent a supporting memorandum, the

³(...continued)
notice. However, a minute entry reflects that a notice was sent to the parties, and the parties do not assert any error in this regard.

⁴Hatch raises various other arguments asserting that the district court erred in dismissing the complaint with prejudice. In light of our resolution of Hatch's appeal on other grounds, we do not consider these other arguments.

matter is not properly before the Court."⁵ Thereafter, Hatch filed a cursory memorandum in support of his motion for change of venue wherein he cited the applicable code section.

The bulk of Hatch's change of venue argument before the district court was as follows:

[T]he Utah Supreme Court has stated that, "where there is a probability that pretrial publicity and prejudice will be given undue consideration, or that bias will creep in because of these factors, it would be well for the trial judge to remove the trial to a place far enough away, where such influence would be a negligible factor if present at all.["] State v. James, 767 P.2d 549[, 552] (Utah 1989).

There [are] sufficient reasons to believe that an impartial trial cannot be held in the Sixth District Court . . . , given the facts and circumstances, set forth in [Hatch's] Affidavit.

After submitting his supporting memorandum, Hatch filed a notice to submit the change of venue motion for decision. At that time the district court had already denied both the original and amended motion for change of venue. Nonetheless, the district court proceeded to deny the motion without prejudice, finding that the motion "is not supported by the necessary information or support to justify the Court taking action at this time." Hatch complains that this ruling is inadequate. We disagree.

The district court's ruling implicitly refers to the inadequacy of Hatch's supporting memorandum pursuant to the requirements of rule 7 of the Utah Rules of Civil Procedure. Rule 7 requires that all motions "shall be accompanied by a supporting memorandum," Utah R. Civ. P. 7(c)(1). One purpose of rule 7's memorandum requirement is to assure "that a court can be apprised of the basis of a motion and rule upon it with a proper understanding." Menzies v. Galetka, 2006 UT 81, ¶ 68, 150 P.3d 480 (internal quotation marks omitted). Hatch's memorandum, filed without the benefit of a motion for change of venue, did not comply with rule 7 and failed to provide the district court

⁵In denying Hatch's change of venue motion, the district court specifically cited rule 7(c) of the Utah Rules of Civil Procedure and directed "[c]ounsel practicing before this Court [to] read the Rules of Civil Procedure and . . . become familiar with their filings."

with information sufficient to justify a change of venue ruling. As a result, we see no error with the district court's denial of Hatch's change of venue motion. Accordingly, we affirm the district court's order denying Hatch's motion for change of venue.

In sum, because Hatch was not given an opportunity to be heard pursuant to rule 4-103(2), we reverse the district court's order dismissing the complaint and remand for further proceedings. We affirm the district court's decision to deny Hatch's motion to change venue, without prejudice, based on his failure to provide the district court with information sufficient to justify a change of venue ruling.

William A. Thorne Jr., Judge

WE CONCUR:

Russell W. Bench, Judge

Gregory K. Orme, Judge