

IN THE UTAH COURT OF APPEALS

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| L. Earl Hawley,               | ) | MEMORANDUM DECISION            |
|                               | ) | (Not For Official Publication) |
| Plaintiff and Appellant,      | ) |                                |
|                               | ) | Case No. 20040461-CA           |
| v.                            | ) |                                |
|                               | ) |                                |
| Union Pacific Railroad Co., a | ) | F I L E D                      |
| Delaware corporation,         | ) | (September 1, 2005)            |
|                               | ) |                                |
| Defendant and Appellee.       | ) | 2005 UT App 368                |
|                               | ) |                                |

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Fifth District, Cedar City Department, 000500737  
The Honorable J. Philip Eves

Attorneys: Richard Ranney, St. George, for Appellant  
            Kent W. Hansen, Salt Lake City, for Appellee

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Before Judges Billings, Davis, and McHugh.

BILLINGS, Presiding Judge:

L. Earl Hawley appeals the district court's denial of his Motion for Relief from Judgment under Utah Rule of Civil Procedure 60(b)(6). We affirm.

Hawley first argues that pursuant to Utah Rule of Judicial Administration 4-506, an attorney does not need the approval of the trial court to withdraw as counsel once a motion for summary judgment has been briefed, argued, and orally decided from the bench, but before the judge has issued a written final order, therefore the district court erred when it did not grant Hawley relief from judgment under rule 60(b)(6).

Utah Rule of Judicial Administration 4-506 states in part that "an attorney may withdraw as counsel of record only upon approval of the court when a motion has been filed and the court has not issued an order on the motion or after a certificate of readiness for trial has been filed." Utah R. Jud. Admin.

4-506(1).<sup>1</sup> In the instant case, a final judgment was not entered until the trial court judge signed the order granting Union Pacific Railroad Company's (Union Pacific) Motion for Summary Judgment on August 20, 2003. Therefore, Hawley's trial attorney, Mr. Mueller, improperly withdrew as counsel because he was not entitled to withdraw before August 20, 2003 without seeking the trial court's approval. See Utah R. Civ. P. 58A(c) ("A judgment is complete and shall be deemed entered for all purposes . . . when the same is signed and filed as herein above provided."); see, e.g., Ron Shepherd Ins. v. Shields, 882 P.2d 650, 653, 655 n.8 (Utah 1994) ("It is well settled that an unsigned minute entry does not constitute an entry of judgment, nor is it a final judgment for purposes of [appeal]," and noting that the "plaintiffs' motion was premature because [the trial court judge's] ruling had not been reduced to a written judgment." (quotations and citations omitted)).<sup>2</sup>

Hawley also argues that he is entitled to relief from judgment under rule 60(b)(6) because Union Pacific did not serve Hawley with Notice of Judgment as required by rule 58A(d). Rule 58A(d) states that "[a] copy of the signed judgment shall be promptly served by the party preparing it in the manner provided in Rule 5. The time for filing a notice of appeal is not affected by the requirement of this provision." Utah R. Civ. P. 58A(d). We disagree with Hawley and hold that the trial court properly denied relief under rule 60(b)(6).

Hawley is not entitled to relief under rule 60(b) because he did not fulfill his duty to inform the trial court and opposing counsel of any changes in his address nor did he exercise due diligence in keeping himself informed of ongoing court proceedings. See Volostnykh v. Duncan, 2001 UT App 26 (per curiam) (recognizing the parties' duties to inform the court of any address changes and to "keep themselves apprized of ongoing court proceedings"). Here, Hawley did not inform the trial court or opposing counsel of his new address. Union Pacific received

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<sup>1</sup>Rule 4-506 of the Utah Rules of Judicial Administration was in effect at all relevant times in this case; however, the rule was repealed effective November 1, 2003 and has been recodified as Utah Rule of Civil Procedure 74. See Utah R. Civ. P. 74.

<sup>2</sup>Hawley argues that he should have received a Notice to Appear or Appoint Counsel from Union Pacific pursuant to rule 4-506 of the Utah Rules of Judicial Administration because his attorney withdrew. However, rule 4-506(4) does not apply because Mueller did not properly withdraw as counsel. Therefore, Union Pacific was not obligated to serve a Notice to Appear or Appoint Counsel on Hawley.

Mueller's notice of withdrawal but the new address was not listed in the notice, rather it was found in the mailing certificate. As a result, Union Pacific attempted to mail Hawley a notice to appear or appoint counsel to the address provided in the Complaint twice, but both attempts were unsuccessful. In addition, Hawley failed to keep himself current with ongoing proceedings. Hawley called the court clerk in June, July, and August to determine if a final order regarding Union Pacific's Motion for Summary Judgment had been issued. He was advised that the judgment could be entered at any time, but Hawley did not call the trial court again for four months--until December. Hawley did not make reasonably diligent efforts to learn of the entry of the judgment, and is therefore not entitled to relief.

Therefore, the trial court properly denied Hawley's rule 60(b)(6) motion and, accordingly, we affirm.

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Judith M. Billings,  
Presiding Judge

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WE CONCUR:

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge