IN THE UTAH COURT OF APPEALS

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Michael L. Hendry, Douglas Bassett, and Five "T" Corporation, Plaintiffs and Appellees, v. G. Lawrence Critchfield, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20040772-CA F I L E D (December 8, 2005) 2005 UT App 530

Second District, Ogden Department, 990906932
The Honorable Roger S. Dutson

Attorneys: Steve S. Christensen, Salt Lake City, for Appellant
Timothy W. Blackburn and Mara A. Brown, Ogden, for Appellees

Before Judges Bench, Greenwood, and McHugh.

PER CURIAM:

G. Lawrence Critchfield appeals the district court's denial of his motion for relief from judgment under rule 60 of the Utah Rules of Civil Procedure.

"We review a district court's decision on a Rule 60(b) motion to set aside a judgment under an abuse of discretion standard." Searle v. Searle, 2001 UT App 367,¶13, 38 P.3d 307. Additionally, review of such a decision is narrow in scope. See Franklin Covey Client Sales, Inc. v. Melvin, 2000 UT App 110,¶19, 2 P.3d 451. "'An appeal of a Rule 60(b) order addresses only the propriety of the denial or grant of relief. The appeal does not, at least in most cases, reach the merits of the underlying judgment from which relief was sought. Appellate review of Rule 60(b) orders must be narrowed in this matter lest Rule 60(b) become a substitute for timely appeals.'" Id. (citations omitted).

Critchfield asserts two reasons as to why the district court erred in refusing to set aside the judgment. First, he claims that the court committed a mistake by allowing a trial to take

place in the absence of Critchfield or his attorney because the district court never signed an order granting his previous counsel's motion to withdrawal. As a result, Critchfield contends that the notice to appear or appoint he received from other counsel after the purported withdrawal was ineffective. Thus, he argues that because the motion to withdraw was not resolved, the trial should not have taken place. This is not the type of "mistake" rule 60(b) is meant to correct. See Franklin Covey Client Sales, 2000 UT App at ¶22. Rule 60(b)(1) is meant to include only the correction of "a minor oversight, such as the omission of damages, which in most cases would be obvious." Id. (citations and quotations omitted). "If a court merely wrongly decided a point of law, that is not 'mistake, inadvertence, surprise, or excusable neglect.'" Id. (citations omitted).

While Critchfield attempts to characterize the failure to sign the order of withdrawal as the type of minor oversight contemplated by the rule, the actual issue is the legal effect of the court's failure to sign the order. Specifically, the issue is whether the district court could go forward with a trial after failing to sign an order of withdrawal, but after Critchfield received a notice to appear or appoint. This does not allege a mistake or inadvertence. Rather, it alleges a mistake of law. Accordingly, Critchfield's proper remedy was to file either a motion under rule 59 of the Utah Rules of Civil Procedure or to file a direct appeal. Critchfield did neither. Therefore, the district court correctly denied Critchfield's motion on the ground of mistake.

Critchfield next argues that the district court erred in failing to grant his rule 60(b) motion because he demonstrated that through his excusable inadvertence, he was not aware of the trial date. The record contains sufficient facts to demonstrate that the district court did not abuse its discretion in denying the motion. Based upon the representations of his former attorney, Critchfield was the person who terminated his services. The certificate of service attached to the withdrawal documents indicated that they had been sent to Critchfield. Critchfield also received a notice to appear or appoint from opposing counsel. In response to that notice, and approximately three months prior to trial, Critchfield enlisted the assistance of an attorney to ascertain the current status of the case. After that brief attempt to determine the status of the case, Critchfield did nothing further to involve himself in the litigation until the day before trial, despite his receipt of one party's trial brief and trial subpoena. Under these circumstances, the district court did not abuse its discretion in concluding that Critchfield was not entitled to relief from the judgment due to Critchfield's inadvertence.

Finally, Critchfield argues that the district court erred when it awarded damages against him personally and awarded punitive damages without making adequate findings of fact. This issue is not properly before the court. Our review is strictly limited to issues raised by the district court's denial of Critchfield's rule 60(b) motion for relief from judgment. See Fisher v. Bybee, 2004 UT 92,¶10, 104 P.3d 1198. Because the issue was not raised in Critchfield's motion, the issue was not preserved for appeal.[1] See Hart v. Salt Lake County Comm'n, 945 P.2d 125, 129 (Utah Ct. App. 1997) (concluding that to preserve issue for appeal a party must first raise the issue before the district court).

We affirm.

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Russell W. Bench,
Associate Presiding Judge

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Pamela T. Greenwood, Judge

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Carolyn B. McHugh, Judge

[1]By concluding that the issue was not preserved for appeal because it was not raised in the rule 60(b) motion, we do not imply that such an issue could be properly addressed in a rule 60(b) motion. We merely conclude that because our review of this appeal is limited to issues presented in the rule 60(b) motion, and this issue was not raised, the issue is not properly before us.