

IN THE UTAH COURT OF APPEALS

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Elaine Jenkins,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)	Case No. 20070061-CA	
)		
v.)		
)	F I L E D	
<u>Alan Jenkins, Trustee</u> ; D.U.)	(December 11, 2008)	
Company, Inc.; and Davis)		
County Cooperative Society,)	<table border="1"><tr><td>2008 UT App 454</td></tr></table>	2008 UT App 454
2008 UT App 454			
Inc.,)		
)		
Defendants and Appellant.)		
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_____)		
)		
Alan Jenkins, Trustee,)		
)		
Third-party Plaintiff)		
and Appellant,)		
)		
v.)		
)		
<u>Elaine Jenkins</u> , Loren Jenkins,)		
Stanley Jenkins, and Jeremiah)		
Jenkins,)		
)		
Third-party Defendants)		
and Appellee.)		

Third District, Salt Lake Department, 050903391
The Honorable Joseph C. Fratto Jr.

Attorneys: Carl E. Kingston, Salt Lake City, for Appellant
 Russell A. Cline, Salt Lake City, for Appellee

Before Judges Greenwood, Thorne, and Bench.

BENCH, Judge:

Defendant Alan Jenkins appeals the trial court's denial of his motion for summary judgment, denial of his motion for leave to amend his answer, and rejection of certain proposed jury instructions. We affirm.

The denial of Defendant's motion for summary judgment is not appealable. "Utah case law suggests that we will entertain an appeal of a denial of a motion for summary judgment only if it involves a legal issue." Normandeau v. Hanson Equip., Inc., 2007 UT App 382, ¶ 13, 174 P.3d 1, cert. granted, 187 P.3d 232 (Utah 2008) (No. 20071006). Defendant raised two legal theories in his motion for summary judgment that he claimed barred Plaintiff's quiet title action: the statute of frauds and issue preclusion. It is apparent from the record that there were disputed facts with respect to both issues, namely, whether Plaintiff had entered into an oral agreement that had been fully performed and thereby removed her action from the statute of frauds, see generally Orton v. Carter, 970 P.2d 1254, 1259 (Utah 1998), and whether Plaintiff had manifested an intention that her stipulated divorce decree be binding as to the issue of property ownership in a subsequent action, see generally Macris & Assocs., Inc. v. Neways, Inc., 2000 UT 93, ¶ 43, 16 P.3d 1214. Because these disputed issues of material fact precluded summary judgment and the denial of the summary judgment motion did not involve purely legal issues, we do not review the denial of Defendant's motion for summary judgment.

"The standard of review of a denial to amend pleadings is abuse of discretion." Kasco Servs. Corp. v. Benson, 831 P.2d 86, 92 (Utah 1992). The Utah Supreme Court "has generally focused on three factors in deciding whether a district court properly granted [or denied] a motion for leave to amend: (1) timeliness; (2) prejudice; and (3) justification." Swan Creek Vill. Homeowners Ass'n v. Warne, 2006 UT 22, ¶ 20, 134 P.3d 1122. "[M]otions to amend are typically deemed untimely when they are filed in the advanced procedural stages of the litigation process, such as after the completion of discovery . . . [or] on the eve of a scheduled trial date." Kelly v. Hard Money Funding, Inc., 2004 UT App 44, ¶ 29, 87 P.3d 734; see also Fishbaugh v. Utah Power & Light, 969 P.2d 403, 408-09 (Utah 1998) (concluding that the trial court had not abused its discretion in denying a motion to amend where the motion was filed following two different continuances of the trial date and only forty-four days before the third scheduled trial date). "The general rule regarding prejudice is that an amendment should be denied when the opposing side would be put to unavoidable prejudice by having an issue adjudicated for which he [or she] had no time to prepare." Swan Creek, 2006 UT 22, ¶ 21 (alteration in original) (emphasis and internal quotation marks omitted). Furthermore, a party can establish justification for the delay in bringing a motion to amend pleadings where the party can demonstrate that the delay was not "due to a dilatory motive, a bad faith effort . . . , or unreasonable neglect in terms of pleading preparation," or that the party had minimal "prior knowledge" of

the events prompting the desired amendment. Kelly, 2004 UT App 44, ¶ 38.

The trial court denied Defendant's motion to amend his answer for untimeliness because the motion was brought after the completion of discovery and just a couple months before the scheduled trial, which had already been continued from a prior date. Additionally, the trial court found that Plaintiff would be prejudiced by having to respond to an affirmative defense without the opportunity to conduct discovery on the issue and that Defendant failed to offer any persuasive justification for his delay in bringing the motion. In light of the late timing of Defendant's motion and the trial court's findings regarding the delay and potential prejudice, we conclude that the trial court did not exceed the discretion afforded it by denying Defendant's motion to amend.

As to the final issue, "[f]ailure to give requested jury instructions constitutes reversible error only if their omission tends to mislead the jury to the prejudice of the complaining party or insufficiently or erroneously advises the jury on the law." State v. Stringham, 2001 UT App 13, ¶ 17, 17 P.3d 1153 (internal quotation marks omitted). Prejudice to the complaining party occurs where "there is a reasonable likelihood that, absent the error, there would have been a result more favorable to the complaining party." Tingey v. Christensen, 1999 UT 68, ¶ 16, 987 P.2d 588.

In his briefing on appeal, Defendant offers no analysis of these factors and fails to cite any legal authority. Instead, Defendant makes only a general argument that the omission of his proposed instructions precluded him from presenting his theory of the case. In support of this general contention, Defendant cites the portion of the record containing his proposed jury instructions, which include nothing more than a bare citation to a statute or a case. As a result, it has been left to this court to make the argument as to how the omission of the proposed instructions was misleading, insufficient, erroneous, or prejudicial. Because of the inadequacy of Defendant's briefing on this issue, see Smith v. Smith, 1999 UT App 370, ¶ 8, 995 P.2d 14 ("An issue is inadequately briefed when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court." (internal quotation marks omitted)), we cannot definitively address it, see Utah R. App. P. 24(k) (allowing appellate courts to disregard briefs that are not in compliance with rule 24). It does appear, however, that Defendant was able to present his theory of the case to the jury. The testimony and evidence highlighted in his appellate brief supported his theory, and if the jury had believed his theory, it

could have simply answered negatively on the special verdict form.

Accordingly, we affirm.

Russell W. Bench, Judge

WE CONCUR:

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge