IN THE UTAH COURT OF APPEALS

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Misty L. Fisher,   )   MEMORANDUM DECISION
)   (Not For Official Publication)
        Plaintiff and Appellee,   )
)   Case No. 20051128-CA
v.   )
)
)   F I L E D
Mishel Minnock,   )   (June 29, 2006)
)
        Defendant and Appellant.   )   2006 UT App 272

Third District, Salt Lake Department, 040927544
The Honorable Stephen L. Roth

Attorneys: Kevin D. Swenson, Salt Lake City, for Appellant
            Stephen D. Spencer, Murray, for Appellee

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

        Mishel Minnock appeals the trial court's order denying her
motion to set aside a default judgment under rule 60(b) of the
Utah Rules of Civil Procedure.[1] We affirm.

        On December 29, 2004, Misty L. Fisher filed a complaint
alleging various causes of action against Minnock. Minnock was
served with the complaint in March 2005, but failed to file an
answer. On April 18, 2005, Fisher moved for entry of default
judgment. The trial court scheduled an evidentiary hearing
regarding damages for June 24. Although Minnock claimed she did
not receive timely notice of this hearing, the record reflects
that the trial court timely mailed notice to Minnock's last known
address. An evidentiary hearing was held on June 24, and the
trial court awarded damages as prayed for and substantiated by
Fisher. On July 5, the trial court entered findings of fact and

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1. After filing this appeal, Minnock filed a Motion for Stay
Pending Outcome of Bankruptcy Proceedings. No memorandum of law
accompanies this motion, and no legal analysis is offered in
support of the motion. The Tenth Circuit has held that 11 U.S.C.
§ 362(a)(1) does not prevent a debtor from commencing or
continuing her own appeal. See Mason v. Oklahoma Turnpike Auth.,
115 F.3d 1442, 1450 (10th Cir. 1997) (citing In re Lyngholm, 24
F.3d 89, 91-92 (10th Cir. 1994)). Thus, Minnock's bankruptcy has
no effect on our disposition of her appeal.

conclusions of law, along with a default judgment in favor of
Fisher in the amount of $35,352.50.

     The following day, Minnock filed her motion to set aside the
default judgment pursuant to rule 60(b), <u>see</u> Utah R. Civ. P.
60(b), on the basis that she did not receive timely notice of the
June 24 hearing. Minnock's motion suggested that her failure to
receive timely notice established a ground to set aside the
default judgment under rule 60(b)(1) or (6). <u>See</u> Utah R. Civ. P.
60(b)(1), (6). However, Minnock never offered a meritorious
defense in support of her motion. After full briefing and oral
argument, the trial court denied Minnock's motion.

     Minnock asserts that the trial court erred when it denied
her motion to set aside the default judgment. Although
"judgments by default are disfavored by the law," <u>Wright v.
Wright</u>, 941 P.2d 646, 649 (Utah Ct. App. 1997), in general, "a
trial court has broad discretion in deciding whether to set aside
a default judgment," <u>Lund v. Brown</u>, 2000 UT 75,¶9, 11 P.3d 277
(per curiam).

     "To be relieved from the default, [Minnock] must show that
[her] motion to set aside was timely, that [she] has a
meritorious defense, and that the default occurred for a reason
specified in rule 60(b)." <u>Black's Title, Inc. v. Utah State Ins.
Dep't</u>, 1999 UT App 330,¶6, 991 P.2d 607. As noted above, Minnock
failed to present a meritorious defense to the trial court. On
appeal, Minnock once again fails to argue a meritorious defense.[2]

     Accordingly, we affirm.

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Judith M. Billings, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge

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2. We recognize that a trial court's discretion regarding rule
60(b) motions is not limitless and "must be based on adequate
findings of fact and on the law." <u>Lund v. Brown</u>, 2000 UT 75,¶9,
11 P.3d 277 (per curiam) (quotations and citation omitted).
While the trial court's order simply denied Minnock's motion, it
specifically incorporated the reasoning stated on the record.
Because the transcript of the oral argument was not provided in
this case, we presume the correctness of the proceedings below.
<u>See</u> <u>State v. Blubaugh</u>, 904 P.2d 688, 699 (Utah Ct. App. 1995).