

IN THE UTAH COURT OF APPEALS

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The Maxine B. Nickel Trust dba )	MEMORANDUM DECISION
Palatial Living Mobile Home )	(Not For Official Publication)
Park, )	
)	Case No. 20070621-CA
Plaintiff and Appellee, )	
)	
v. )	F I L E D
)	(May 22, 2008)
)	
Craig Carlsen aka D. Craig )	2008 UT App 185
Carlsen aka David Craig )	
Carlsen, )	
)	
Defendant and Appellant. )	

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First District, Logan Department, 040100970  
The Honorable Ben H. Hadfield

Attorneys: David Craig Carlsen, Logan, Appellant Pro Se  
Robert W. Thompson and Murry Warhank, Salt Lake City,  
for Appellee

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Before Judges Bench, Billings, and McHugh.

BILLINGS, Judge:

Defendant Craig Carlsen appeals from the trial court's order granting summary judgment in favor of Plaintiff The Maxine B. Nickel Trust, dba Palatial Living Mobile Home Park (Palatial Living), and dismissing Carlsen's counterclaims.<sup>1</sup> We affirm.

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1. Neither party addresses the issue of whether we have jurisdiction to consider the order dismissing Carlsen's counterclaims if the eviction action is still pending below. See Bradbury v. Valencia, 2000 UT 50, ¶ 11, 5 P.3d 649 ("[T]he order granting . . . summary judgment was not a final order because the [defendant's] counterclaim and [an] intervening claim remain[ed] pending before the trial court."). However, based on our independent review of the record, we conclude that we do have jurisdiction because the eviction action is moot. Carlsen did not contest the action, and according to the trial court's February 15, 2007 memorandum decision, Carlsen has "moved from the premises."

First, Carlsen contends that Judge Hadfield's assignment to this case was improper. After reviewing Carlsen's affidavit of bias, Judge Hadfield properly followed the provisions of rule 63(b) of the Utah Rules of Civil Procedure, see Utah R. Civ. P. 63(b), by seeking a reviewing judge, who determined that Carlsen's affidavit was legally insufficient. Because these provisions were met, we examine the reviewing judge's decision for an abuse of discretion. See State v. Alonzo, 973 P.2d 975, 979 (Utah 1998).

"[J]udges are presumed to be qualified." In re Affidavit of Bias, 947 P.2d 1152, 1153 (Utah 1997). To overcome this presumption, Carlsen must show that Judge Hadfield "had such a bias . . . that he could not fairly or impartially determine the issues." Poulsen v. Frear, 946 P.2d 738, 742 (Utah Ct. App. 1997) (internal quotation marks omitted). Carlsen has not done so. Carlsen's attacks on Judge Hadfield focus on prior cases brought by Carlsen. Carlsen argues that because Judge Hadfield has denied every motion Carlsen has brought in previous cases, Judge Hadfield is biased against him. This argument fails because Carlsen does not demonstrate that Judge Hadfield's rulings on Carlsen's previous motions were incorrect. Carlsen also claims that Judge Hadfield is biased because the record of this or another case was moved from Cache County to Box Elder County. This claim also fails because Carlsen does not show that Judge Hadfield was responsible for the transfer of the records and does not show any non-conclusory link between the location of the records and any alleged bias. Carlsen further contends that in another proceeding before Judge Hadfield, a witness impersonated a police officer. Carlsen does not explain how this shows prejudice on the part of Judge Hadfield. Carlsen has not shown facts that support a reasonable appearance of bias and we conclude that he has not shown that the reviewing court abused its discretion in approving Judge Hadfield's handling of the case.

Carlsen further takes the position that because judges are prohibited from commenting on the legal sufficiency of an affidavit of bias, so also should opposing parties be prohibited from commenting on the same. This argument has no basis in law or in the Rules of Civil Procedure or and we decline to adopt it.

Second, Carlsen argues that the trial court's grant of summary judgment in favor of Palatial Living on Carlsen's counterclaim was improper. Carlsen's claims fail as a matter of law. Carlsen's claim that he is entitled to damages because Palatial Living required him to make certain repairs as a condition of acceptance of a lease fails because he had no contract with Palatial Living. Carlsen contracted with Lyle Cooper to purchase the mobile home, and the agreement to make

repairs was part of that contract. Thus, Palatial Living cannot be held liable for the repairs Carlsen promised to make. Carlsen claims that he is entitled to damages because Palatial Living required him to replace the siding on the mobile home before reselling it. This claim also fails because Palatial Living has the statutory authority to require a mobile home owner to make repairs or remove a rundown mobile home from the park. See Utah Code Ann. § 57-16-5(1)(a) (Supp. 2007). Finally, Carlsen's claim that Palatial Living's rules and regulations are an attempt to convert his property fails because Carlsen contractually agreed to abide by the rules and regulations and thus no unlawful action has taken place. Furthermore, Carlsen's complaints would not rise to the level of conversion. "A conversion is an act of wilful interference with a chattel, done without lawful justification by which the person entitled thereto is deprived of its use and possession." Jones v. Salt Lake City Corp., 2003 UT App 355, ¶ 9, 78 P.3d 988 (internal quotation marks omitted). For example, Carlsen alleges that Palatial Living's request that he activate his heat tape was a conversion. Carlsen has failed to show that this interfered with his right to possession or that the requirement was unlawful or otherwise unreasonable.

Third, Carlsen argues that he was denied access to the court and to his right to a jury trial under article I, section 11 of the Utah Constitution, see Utah Const. art. I, § 11, when Palatial Living was granted summary judgment on seven counts in the counterclaim even though its motion did not address all seven issues. However, because Carlsen raised the issues and the court ruled on them, Carlsen was afforded all the rights to which he is entitled. Carlsen further argues that he was denied access to the courts by being deprived of access to the court records in the case. However, Carlsen has not explained in what way he was prejudiced, and we accordingly decline to review this issue.

Fourth, Carlsen argues that the trial court abused its discretion by denying his motion to amend his counterclaim and by dismissing his third-party complaint. Carlsen fails to meet the requirements of rule 24(a)(9) of the Utah Rules of Appellate Procedure; specifically, that a party present "the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on," see Utah R. App. P. 24(a)(9). Carlsen merely asserts his contention in an introductory fashion, states that rule 15(a) of the Utah Rules of Civil Procedure mandates that leave to amend pleadings "shall be freely given," see Utah R. Civ. P. 15(a), and concludes that the trial court abused its discretion in not amending the pleadings. Carlsen has not demonstrated that the trial court abused its discretion in failing to allow the amendment, and we therefore affirm the ruling of the trial court.

Fifth, Carlsen argues that the trial court erred by conducting numerous hearings in Box Elder County over Carlsen's objections when the matter was pending in Cache County. Because Carlsen did not preserve this issue below, we decline to address it. See State v. Pinder, 2005 UT 15, ¶ 45, 114 P.3d 551.

In sum, we affirm all of the trial court's rulings.

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Judith M. Billings, Judge

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WE CONCUR:

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Russell W. Bench, Judge

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Carolyn B. McHugh, Judge