

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Lynn A. Christensen,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20090136-CA
v.)	
)	F I L E D
Anthony Ramirez,)	(October 1, 2009)
)	
Defendant and Appellant.)	2009 UT App 282

Third District, West Jordan Department, 070408001
The Honorable Robert Adkins

Attorneys: Anthony Ramirez, Salt Lake City, Appellant Pro Se

Before Judges Bench, Orme, and McHugh.

PER CURIAM:

Anthony Ramirez appeals from the trial court's order denying his motion to set aside a judgment pursuant to rule 60(b) of the Utah Rules of Civil Procedure. This is before the court on its own motion for summary disposition to determine whether there is a final order providing jurisdiction or, alternatively, whether there is a substantial question for review.

"It is well settled under Utah law, an order denying relief under [r]ule 60(b) is a final appealable order." Amica Mut. Ins. Co. v. Schettler, 768 P.2d 950, 970 (Utah Ct. App. 1989). Accordingly, unless there is something that would otherwise defeat jurisdiction, the trial court's order denying relief is a final order, and this court has jurisdiction. See id.; see also Utah R. App. P. 3.

Ramirez asserts that there is no final order because the trial court lacked personal jurisdiction over him. Ramirez did not, however, plead a personal jurisdiction defense below and has therefore waived it. Under rule 12(b) of the Utah Rules of Civil Procedure, Ramirez could have raised a challenge to personal jurisdiction either in his answer to the complaint or by separate motion. See Utah R. Civ. P. 12(b). He did neither. Accordingly, he waived this defense. See id. R. 12(h). Furthermore, the record establishes that Ramirez was served with

the summons and complaint, he filed his own papers in the court, and he participated fully in the case. The court clearly had jurisdiction over him. See In re A.F.K., 2009 UT App 198, ¶ 7 n.4, 635 Utah Adv. Rep. 44 (stating that when a party submits itself to a court's jurisdiction, the court has jurisdiction over the party).

Ramirez also asserts that he has a counterclaim pending below that would make the appeal improper. See generally Bradbury v. Valencia, 2000 UT 50, ¶ 11, 5 P.3d 649. The record does not support this contention. Ramirez initially filed an answer but pleaded no counterclaim. His answer was stricken and default was entered. Ramirez has not identified any remaining claim. Accordingly, this court has jurisdiction over this appeal.

This court will not disturb a trial court's denial of a rule 60(b) motion absent an abuse of discretion. See Fisher v. Bybee, 2004 UT 92, ¶ 7, 104 P.3d 1198. Additionally, the scope of an appeal from a rule 60(b) motion is limited to reviewing only whether relief was properly denied; it does not extend to any issue in the underlying case. See id. ¶ 10. Ramirez has challenged only the finality of the order. He has not stated any substantive issue for review regarding the denial of his motion. As a result, there is no substantial question for review meriting further proceedings by this court.

Affirmed.

Russell W. Bench, Judge

Gregory K. Orme, Judge

Carolyn B. McHugh, Judge