

IN THE UTAH COURT OF APPEALS

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Joanne L. Stone,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellee,)	
)	Case No. 20060353-CA
v.)	
)	F I L E D
Todd L. Stone,)	(May 1, 2008)
)	
Respondent and Appellant.)	2008 UT App 154

Third District, Salt Lake Department, 014903655
The Honorable Tyrone E. Medley

Attorneys: Todd L. Stone, Salt Lake City, Appellant Pro Se

Before Judges Bench, Davis, and Orme.

PER CURIAM:

Todd L. Stone appeals from the Supplemental Judgment and Decree of Divorce entered on January 9, 2006. Joanne Stone has not filed a responsive brief in this matter.¹

Todd Stone first argues that the district court erred in allowing Joanne Stone to move from Utah to California prior to the expiration of sixty days from the date Joanne Stone gave Todd Stone notice of her intent to move. See Utah Code Ann. § 30-3-37(1) (Supp. 2007). On September 7, 2005, Joanne Stone sent Todd Stone a notice of her intent to relocate to California on October 1, 2005. In response to a motion filed by Todd Stone, the

1. Joanne Stone's counsel, Brent R. Chipman, failed to file a brief in this matter. After Todd Stone filed his brief, Mr. Chipman sought and received an extension to file a responsive brief. However, Mr. Chipman never filed that brief. After reviewing Mr. Stone's arguments and the extensive record, this court requested that Mr. Chipman file a brief to assist the court in its analysis or notify the court that he did not intend to file a brief. Mr. Chipman agreed to provide a brief and sought another extension to prepare the brief. However, Mr. Chipman failed to file the brief or provide the court with notice that he was not responding.

district court temporarily blocked the move and conducted a hearing on October 6, 2005. At the hearing, the district court determined, among other things, that it would be in the best interest of the children to allow Joanne Stone to move prior to the expiration of the sixty days. As a result, the court allowed Joanne Stone to leave the state that day. Had Joanne Stone been required to comply with the sixty-day notice requirement, she would not have been able to relocate until November 6, 2005. Without deciding whether the district court acted within its discretion in waiving part of the notice period, we conclude that the issue is moot. See State v. Sims, 881 P.2d 840, 841 (Utah 1994) (stating that an issue is moot when "the requested judicial relief cannot affect the rights of the litigants"). Even if the district court had not allowed the move prior to the expiration of sixty days, Joanne Stone could have moved from Utah on November 6, 2005. Because Joanne Stone could have relocated on November 6, 2005, without any legal impediment, there is no remedy this court can grant two and one-half years after the fact.² As such, all issues relating to the move are now moot.

Todd Stone next alleges that the district court erred in failing to include a parenting plan in the final decree. Todd Stone waived this argument by entering into a settlement agreement on August 3, 2005. By agreeing to the settlement, Todd Stone waived the right to claim that such agreement should contain additional or different terms. See DLB Collection Trust by Helgesen & Waterfall v. Harris, 893 P.2d 593, 595 (Utah Ct. App. 1995) ("It is settled that stipulations are conclusive and binding on the parties, unless good cause is shown for relief. . . . This court 'cannot overlook or disregard stipulations which are absolute and unequivocal. Stipulations of attorneys may not be disregarded or set aside at will.'" (citations omitted)).

Todd Stone argues that the district court failed to completely resolve several issues relating to the divorce, thereby denying him due process. It appears that Todd Stone urges that while the decree adequately resolved the financial issues going forward, it failed to address several issues that arose between the time the divorce action was filed and the time of the final decree. We disagree. The final decree contains several provisions regarding the parties' responsibilities concerning prior debts and obligations arising from any temporary orders in place during the course of the divorce proceedings. Further, another provision expressly states that Todd Stone "released all claims against [Joanne Stone] arising through July

2. Todd Stone could have filed a request for an extraordinary writ immediately after the district court's decision.

2005, in this matter or in the past proceedings for protective orders." When read in unison, it is clear that final obligations for any debts, bills, or other costs incurred during the course of the divorce proceedings, unless expressly stated otherwise, were to be borne by the party that was previously ordered to resolve that debt or had otherwise taken on that obligation. In other words, the parties stipulated, and the judge ultimately ordered, that other than the items specifically discussed in the decree, the parties were to walk away, each bearing all costs previously incurred, forever releasing the other from responsibility to contribute to those previously incurred costs. Thus, the final decree adequately resolved questions concerning all obligations incurred prior to the parties' settlement agreement.

Todd Stone also claims that the district court erred in failing to treat a March 4, 2005 filing as a notice of appeal. Even if this court were to assume that the March 4, 2005 filing should have been considered a notice of appeal, Todd Stone cannot demonstrate that he was prejudiced by the alleged error because this court would not have had jurisdiction to review the appeal. An order is final only if it disposes of the case as to all parties and "finally dispose[s] of the subject-matter of the litigation on the merits of the case." Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649 (internal quotation marks omitted). This court does not have jurisdiction to consider an appeal unless it is taken from a final judgment or order, see Utah R. App. P. 3(a), or qualifies for an exception to the final judgment rule, see Loffredo v. Holt, 2001 UT 97, ¶¶ 10, 15, 37 P.3d 1070. Any of the orders Todd Stone sought review of in his March 4, 2005 filing would have been considered temporary orders that failed to finally dispose of the subject matter of the case. Accordingly, this court would have been without jurisdiction to review the claims at that time, thereby rendering any alleged error harmless.³

Todd Stone next alleges that the decree was not a valid final order because the parties did not agree to it. Within the context of this issue he makes several sub-arguments that are only tangentially related to one another. Todd Stone's primary argument focuses on his belief that the final decree sought to

3. To the extent Todd Stone is arguing that the documents should have been considered as a request for the trial court to review the Commissioner's decisions instead of a notice of appeal, his argument also fails. Todd Stone waived the issue by agreeing to the settlement that resolved all claims between the parties. See DLB Collection Trust by Helgesen & Waterfall v. Harris, 893 P.2d 593, 595 (Utah Ct. App. 1995).

bind his mother, Annabelle Stone, to its terms despite the fact that she was not a party to the litigation. Todd Stone does not have standing to litigate issues on behalf of Annabelle Stone. See Sierra Club v. Sevier Power Co., 2006 UT 74, ¶ 11, 148 P.3d 960 (stating that to have standing a person must demonstrate that they suffered a distinct and palpable injury or the party can demonstrate it is a proper party to assert a matter of great public importance). Therefore, this court cannot review arguments made on her behalf. To the extent that Todd Stone is asserting his own interests, i.e., he cannot comply with the divorce decree because it attempts to bind a non-party, his argument also fails because he waived the issue. Todd Stone voluntarily entered into the August 3, 2005 settlement, which was accepted by the court. This settlement included conditions for the sale and distribution of real property of which he now complains. He knew at the time of the settlement of the existence of Annabelle Stone's claimed interests in the properties and voiced no objection. Because he agreed to the settlement agreement encompassing the sale of the properties, he cannot now raise the issue on appeal. See Brewer v. Denver & Rio Grande W. R.R., 2001 UT 77, ¶ 20, 31 P.3d 557 (concluding that a party waives its right to appeal an issue when it makes admissions before the district court that are inconsistent with the argument); DLB Collection Trust, 893 P.2d at 595.⁴

Todd Stone also argues that the final decree does not reflect the final settlement agreement between the parties because Joanne Stone added provisions that were not agreed to in the August 3, 2005 settlement. Specifically, Todd Stone points to a provision requiring him to pay certain fees associated with the Office of Recovery Service's collection of child support amounts. However, Todd Stone fails to cite to any place in the record where he raised the issue before the trial court. See State v. Briggs, 2006 UT App 448, ¶ 4, 147 P.3d 969 (stating that claimed errors must be brought to the attention of the district court to give the court an opportunity to correct any error). Because Todd Stone failed to establish that he raised this issue before the trial court, he fails to demonstrate that the issue is preserved for review. See Holman v. Callister, Duncan & Nebeker, 905 P.2d 895, 899 (Utah Ct. App. 1995) (stating that a litigant's failure to raise an issue with the district court fails to preserve the claim for appeal).

4. We note that the final decree specifically states that the court is not binding Annabelle Stone to its terms, and if problems arise in carrying out the terms of the final decree due to Annabelle Stone's interest in the properties, the settlement provisions regarding custody and parent time would be unaffected.

Todd Stone also argues that the district court erred by failing to value the real estate properties at issue in the case as of the date of separation and that the court erred in allowing the parties to stipulate that the first \$35,000 from the sale of those properties would go to Joanne Stone's counsel to cover attorney fees. However, Todd Stone waived the right to seek review of these issues when he entered into the settlement agreement that specifically set forth those terms. See DLB Collection Trust, 893 P.2d at 595.

Next, Todd Stone claims that the district court erred in not allowing his two youngest children to be represented by their own counsel. As with several of the issues discussed above, Todd Stone waived the right to pursue this issue on appeal when he entered into the settlement agreement. The transcript of the August 3, 2005 hearing is clear that Todd Stone entered into the settlement agreement without reserving any right to pursue this issue on appeal. As such he cannot raise the issue on appeal. See id.

Finally, Todd Stone claims that the district court erred in awarding attorney fees to Joanne Stone in an April 25, 2006 order. However, this court has no jurisdiction to review the issue. This issue arose in the context of a post judgment order, which is subject to its own rules of finality and appealability. See Cahoon v. Cahoon, 641 P.2d 140, 142 (Utah 1982). The notice of appeal in this case was only effective to appeal issues that became final and appealable as a result of the court entering the final decree on January 9, 2006.

Affirmed.⁵

Russell W. Bench, Judge

James Z. Davis, Judge

Gregory K. Orme, Judge

5. To the extent Todd Stone has raised any other issues not specifically addressed above, we determine that they are without merit or that we cannot address them due to Todd Stone's failure to adequately brief the issues.