

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Donnie R. Sweazey,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellant,)		
)	Case No. 20050584-CA	
v.)		
)	F I L E D	
Flying J, Inc.,)	(June 22, 2006)	
)		
Defendant and Appellee.)	<table border="1"><tr><td>2006 UT App 265</td></tr></table>	2006 UT App 265
2006 UT App 265			

Third District, Salt Lake Department, 990909999
The Honorable Glenn K. Iwasaki

Attorneys: Donnie R. Sweazey, Salt Lake City, Appellant Pro Se
James K. Tracy and Patrick S. Malone, Salt Lake City,
for Appellee

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

Donnie Sweazey appeals from a judgment in a bench trial in favor of Flying J, Inc. We affirm.

Sweazey first asserts that the district court erred in conducting a bench trial instead of a jury trial. A party who fails to object to an order setting a bench trial waives the right to a jury trial even when that party had originally requested a jury trial in his complaint and paid the associated fee. See Aspenwood, L.L.C. v. C.A.T., L.L.C., 2003 UT App 28, ¶¶38-42, 73 P.3d 947. While Sweazey's original complaint requested a jury trial, after a scheduling conference on August 2, 2004, the district court set the case for a three-day bench trial. Sweazey did not object to this order. This trial setting was later stricken and a new trial setting was scheduled for April 5, 2005. Again, Sweazey did not object to the setting of the bench trial. In fact, Sweazey did not bring this issue to the district court's attention until over thirty days after the trial actually occurred.¹ Accordingly, because Sweazey did not

¹We note that Sweazey has failed to include numerous transcripts in the record on appeal, including the trial
(continued...)

timely object to the setting of the bench trial, he waived his right to a jury trial.

Sweazey next argues that the district court abused its discretion by granting his former counsel's motion to withdraw. The court granted the motion during the course of a scheduling conference held on August 2, 2004. Sweazey was present during this conference. The record contains no objections to the withdrawal prior to Sweazey's motion to reconsider, which was filed over thirty days after the bench trial. As there was no timely objection to his counsel's withdrawal, the issue was waived. See Evans v. State, 963 P.2d 177, 180 (concluding State waived right to challenge order to which it did not object).

Next, Sweazey argues that the district court was biased. Specifically, Sweazey argues that the district court demonstrated bias by asking defense counsel if the case should have been dismissed for failure to reach the \$3000 personal injury protection threshold. However, Sweazey did not include a copy of the trial transcript in the record. Without the transcript it is impossible to review Sweazey's claims and we must assume the regularity of the proceedings below. See State v. Litherland, 2000 UT 76, ¶11, 12 P.3d 92. Accordingly, Sweazey fails to demonstrate that the district court was biased against him.

Finally, Sweazey argues that the district court erred in awarding Flying J costs that were incurred prior to his bankruptcy discharge in 2003. However, the bankruptcy discharge under Chapter 7 applied only to "all debts that arose before the date of the order." 11 U.S.C. § 727(b) (2004). Liability for the costs incurred in this case did not arise until April 6, 2005, when the trial court entered its order awarding costs to Flying J. This occurred approximately two years after the discharge. Thus, the debt did not exist at the time of his bankruptcy discharge and it was not discharged by the 2003 bankruptcy. See Boeing N. Am., Inc. v. Ybarra, 424 F.3d 1018, 1024 (9th Cir. 2005) (concluding that "by voluntarily continuing to pursue litigation post-petition that had been initiated

¹(...continued)
transcript and the transcripts of any pretrial proceedings. Accordingly, we assume the regularity of these proceedings. See State v. Litherland, 2000 UT 76, ¶11, 12 P.3d 92.

pre-petition, a debtor may be held personally liable for attorney's fees and costs that result from that litigation").

Accordingly, the judgment of the district court is affirmed.

Judith M. Billings, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge