

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

William York,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellant,	)	
	)	Case No. 20090561-CA
v.	)	
	)	F I L E D
Richard Gardiner,	)	(September 24, 2009)
	)	
Defendant and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2009 UT App 277</span>

-----

Fourth District, Fillmore Department, 050700049  
The Honorable Fred D. Howard

Attorneys: William York, Delta, Appellant Pro Se  
            Glenn C. Hanni, Stuart H. Schultz, and Andrew D.  
            Wright, Salt Lake City, for Appellee

-----

Before Judges Bench, Orme, and McHugh.

PER CURIAM:

William York appeals the trial court's denial of 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 York's motion for summary disposition asserting manifest error and Richard Gardiner's cross-motion for summary disposition asserting that there is no substantial question for review. We affirm.

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 the denial of 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.

The trial court denied York's motion for two reasons. First, the trial court found the motion to be untimely. Motions under rule 60(b) asserting certain grounds for relief must be brought "within a reasonable time." Utah R. Civ. P. 60(b). York filed his motion more than two years after the judgment was affirmed on appeal. The motion was also two years after the issuance of the decision that York relies on to assert his claim. The trial court determined that York had not filed his motion

within a reasonable time under rule 60(b). York does not challenge this finding.

Second, the trial court found the motion to be without merit because the case upon which York relies was issued after the court of appeals affirmed the dismissal of York's complaint. York also does not challenge this determination of the trial court. Instead, York argues matters related to the underlying case. However, the issues he raises are beyond the scope of an appeal from the denial of a rule 60(b) motion. See Fisher, 2004 UT 92, ¶ 10. Because York has not challenged the trial court's grounds for the denial of his rule 60(b) motion, he has failed to state a substantial question for review warranting further consideration by this court.

Affirmed.

---

Russell W. Bench, Judge

---

Gregory K. Orme, Judge

---

Carolyn B. McHugh, Judge