IN THE UTAH COURT OF APPEALS

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William York, Plaintiff and Appellant, v. Richard Gardiner, Defendant and Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060349-CA F I L E D (November 24, 2006) 2006 UT App 471

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

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Before Judges Greenwood, Davis, and Thorne.

PER CURIAM:

William York appeals a district court order dismissing his claims against Richard Gardiner. The district court held that York's claims were barred by Utah Code section 78-12-25(3), the applicable statute of limitations. See Utah Code Ann. § 78-12-25(3) (2002). York argues that section 78-12-25 is unconstitutional. In addition, York argues that the district court erred when it held that section 78-12-35 did not toll the statute of limitations. See Utah Code Ann. § 78-12-35 (2002). We affirm.

York cites no authority for his argument that section 78-12-25 is unconstitutional. To the contrary, section 78-12-25 is "presumptively constitutional." Avis v. Board of Review, 837 P.2d 584, 587 (Utah Ct. App. 1992) (citing McHenry v. Utah Valley Hosp., 724 F. Supp. 835, 837 (D. Utah 1989)).

> "[A] statute of limitations is constitutionally sound if it should allow a reasonable, not unlimited, time in which to bring suit. What shall be considered a reasonable time must be settled by the

> judgment of the legislature, and the courts will not inquire into the wisdom of establishing the period of legal bar, unless the time allowed is manifestly so insufficient that the statute becomes a denial of justice."

Id. (quoting McHenry, 724 F. Supp. at 837). In McHenry, a Utah federal district court specifically upheld the constitutionality of section 78-12-25. See 724 F. Supp. at 839. York offers no argument that McHenry was decided in error, or that the four-year time period allowed by the legislature for his cause of action equates to a "denial of justice." Consequently, York's argument is without merit.

York also argues that the district court erred when it held that section 78-12-35 did not apply to toll the statute of limitations in the underlying case. See Utah Code Ann. § 78-12-35. "A trial court's decision to grant or deny a motion to reconsider summary judgment is within the discretion of the trial court, and we will not disturb its ruling absent an abuse of discretion." Timm v. Dewsnup, 921 P.2d 1381, 1386 (Utah 1996).

Section 78-12-35 states:

> Where a cause of action accrues against a person when he is out of the state, the action may be commenced within the term as limited by this chapter after his return to the state. If after a cause of action accrues he departs from the state, the time of his absence is not part of the time limited for the commencement of the action.

Utah Code Ann. § 78-12-35. In Lund v. Hall, 938 P.2d 285 (Utah 1997), the Utah Supreme Court held that "under section 78-12-35 the statute of limitations will not be tolled when a defendant is out of state, as long as he is still amenable to service of process in the state of Utah." Id. at 290. "This position is consistent with the majority of states which hold that the statute of limitations will not be tolled against a defendant who leaves the state after the cause of action arose but who is still amenable to process within the state." Id.

The district court did not abuse its discretion when it found that section 78-12-35 did not apply because Gardiner was at all times amenable to service of process pursuant to Utah's long-arm statute. See Utah Code Ann. § 78-27-24 (2002). Furthermore, because York filed his complaint more than four years after the

accrual of his cause of action, the district court correctly dismissed his complaint.

Accordingly, we affirm.

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Pamela T. Greenwood,
Associate Presiding Judge

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James Z. Davis, Judge

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William A. Thorne Jr., Judge