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IN THE UTAH COURT OF APPEALS

MATTHEW WINTERS, Appellant, v. THE CINCINNATI INSURANCE COMPANY, Appellee.	ORDER OF SUMMARY AFFIRMANCE Case No. 20170841-CA
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Before Judges Christiansen, Toomey, and Mortensen.

This case is before the Court on a motion for summary disposition filed by Appellee The Cincinnati Insurance Company (Cincinnati), and the response filed by Appellant Matthew Winters.

On August 18, 2017, Cincinnati's registered agent was served with a ten-day Summons and Complaint. Winters did not timely file proof of service along with a copy of the complaint within ten days. On August 28, 2017, Winters filed his Complaint in the district court. On September 9, 2017, Cincinnati filed a motion to dismiss the complaint, with prejudice, which the district court granted on September 29, 2017.

"A civil action is commenced by (1) filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint in accordance with Rule 4." Utah R. Civ. P. 3(a) (emphasis added). If a plaintiff intends to commence a civil action by service of a summons and copy of a complaint, the plaintiff must file proof of service and a copy of the complaint within ten days of service. *See id.* Although Winters did not comply with that requirement, he also filed a complaint in the district court on August 28, 2017, which operated to commence a civil action under rule 3(a). "The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint." Utah R. Civ. P. 3(b) (emphasis added). Although Winters concedes that his filing of a complaint commenced a civil action, he claims that his subsequent failure to file proof of service within ten days after service divested the district court of jurisdiction. This claim lacks merit. The district court had jurisdiction from the time of the filing of the complaint and therefore had jurisdiction to consider

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and determine Cincinnati's motion to dismiss. Nothing in the case of *Harper v. Froerer*, 2009 UT App 337U (per curiam) supports the position urged by Winters.

Because the only claim raised by Winters in this appeal is that the district court lacked jurisdiction to consider and grant Cincinnati's motion to dismiss, the appeal presents no substantial issue for review by this court. Based upon the foregoing,

IT IS HEREBY ORDERED that the ruling of the district court granting the motion to dismiss the complaint with prejudice is affirmed.

Dated this 11th day of December, 2017.

FOR THE COURT:

Kate A. Toomey

Kate A. Toomey, Judge

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The Order of the Court is stated below:

Dated: September 29, 2017
03:07:11 PM

At the direction of:
/s/ ROBERT FAUST
District Court Judge
by
/s/ MITCHELL METCALF
District Court Clerk

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

MATTHEW WINTERS,	:	RULING
Plaintiff,	:	RULING ON MOTION TO DISMISS
	:	
vs.	:	Case No: 170905452
CINCINNATI INSURANCE COMPANY,	:	Judge: ROBERT FAUST
Defendant.	:	Date: September 29, 2017

After a review of the pleadings on the Motion to Dismiss, the Court grants the motion and dismisses this case.

End Of Order - Signature at the Top of the First Page

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 170905452 by the method and on the date specified.

EMAIL: MATTHEW WINTERS matt.winters@live.com
EMAIL: BARBARA K BERRETT bberrett@berrettandassoc.com
EMAIL: SETH D OXBORROW soxborrow@berrettandassoc.com

09/29/2017 /s/ MITCHELL METCALF
Date: _____

Deputy Court Clerk

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The Order of the Court is stated below:

Dated: March 22, 2018
03:47:46 PM

/s/ Thomas R. Lee
Associate Chief Justice



IN THE SUPREME COURT OF THE STATE OF UTAH

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Matthew Winters,
Petitioner,

v.

Cincinnati Insurance Company,
Respondent.

ORDER

Supreme Court No. 20180017-SC

Court of Appeals No. 20170841-CA

Trial Court No. 170905452

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This matter is before the Court upon a Petition for Writ of Certiorari, filed on January 10, 2018.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

End of Order - Signature at the Top of the First Page