IN THE UTAH COURT OF APPEALS

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David Fuller, Plaintiff and Appellant, v. Krik Myers, Raylynn Sly, Teresa Sunday, Dennis Sunday, Bernhard Mayer, and Mayna Fuller, Defendants and Appellees.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20070032-CA F I L E D (June 19, 2008) 2008 UT App 230

Fourth District, Provo Department, 040401694
The Honorable James R. Taylor

Attorneys: David Fuller, Springville, Appellant Pro Se
Rosemond G. Blakelock and Matthew P. Jube, Provo, for Appellees

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Before Judges Bench, Billings, and Orme.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under existing law.

Plaintiff's most substantial claim is that he was improperly denied the right to a jury trial. The trial court determined that Plaintiff did not pay the jury fee as prescribed by rule 38(b), see Utah R. Civ. P. 38(b), and that he thereby waived his right to a jury trial, see id. (d). Having so determined, the trial court nonetheless allowed Plaintiff to brief the issue and try to convince the court that he was entitled to a jury under the terms of rule 38(b). The trial court remained unconvinced, and Plaintiff has not persuaded us that the court erred in so ruling. Cf. State v. Litherland, 2000 UT 76, ¶ 17, 12 P.3d 92 (noting appellant bears the burden of persuasion on appeal). Plaintiff also claims that he was denied a jury trial because the judge was biased against him as a pro se litigant. Although the

trial court did comment that a pro se litigant might fare better in a bench trial than a jury trial, Plaintiff calls our attention to no evidence in the record suggesting that the judge was actually biased against Plaintiff as a pro se litigant.

Plaintiff also alleges that his attorneys provided ineffective assistance, in violation of the Sixth Amendment. The Sixth Amendment right to the effective assistance of counsel is not implicated in civil cases. See Davis v. Grand County Serv. Area, 905 P.2d 888, 894 (Utah Ct. App. 1995), overruled on other grounds by Gillett v. Price, 2006 UT 24, ¶ 8, 135 P.3d 861 (Utah 2006). Rather, a malpractice action "is frequently suggested as the appropriate remedy for the client whose counsel's performance falls below the standard of professional competence." Id.

A number of other legal issues raised by Plaintiff are inadequately briefed.[1] Those issues concern malicious prosecution and the insufficiency of the trial court's findings. We are mindful that Plaintiff is pro se, but the deficiencies in his briefing are not hypertechnical matters. On the contrary, they are substantial departures from what our rule 24 requires. See Utah R. App. P. 24. Of particular concern, Plaintiff fails to identify any appellate standards of review for the issues contained in his brief, see id. (a)(5), and he fails to engage in any legal analysis that is helpful to this court, instead advancing conclusory statements without supporting legal authority or, for the most part, relevant citations to the record. See id. (a)(9). The instances where Plaintiff does cite to the record are either incorrect or are not logically supported by what is contained in the record.

"It is well established that an appellate court will decline to consider an argument that a party has failed to adequately brief." Valcarce v. Fitzgerald, 961 P.2d 305, 313 (Utah 1998). "An adequately briefed argument must provide 'meaningful legal analysis.' A brief must go beyond providing conclusory statements and 'fully identify, analyze, and cite its legal arguments.'" West Jordan City v. Goodman, 2006 UT 27, ¶ 29, 135 P.3d 874 (footnotes and citations omitted). If an appellant does not clearly identify and analyze the issues, we simply cannot address them. We address only those issues that are properly identified, clearly preserved, and adequately supported.

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1. Plaintiff also raises one legal issue that was not preserved in the trial court, i.e., the default issue. "As a general rule, claims not raised before the trial court may not be raised on appeal." State v. Holgate, 2000 UT 74, ¶ 11, 10 P.3d 346.

Finally, Plaintiff challenges the trial court's findings, but he fails to marshal the evidence supporting the findings. To successfully challenge a finding of fact, "an appellant must first marshal all the evidence in support of the finding and then demonstrate that the evidence is legally insufficient to support the finding even when viewing it in a light most favorable to the court below." Chen v. Stewart, 2004 UT 82, ¶ 76, 100 P.3d 1177 (citation omitted). Plaintiff does not meaningfully challenge the evidentiary basis for the trial court's findings. Accordingly, we will not disturb the findings made by the trial court. See id. ¶ 80.

Defendants request attorney fees and double costs related to defending this appeal, claiming that Plaintiff filed a "frivolous appeal." See Utah R. App. P. 33(b). "The sanction for filing a frivolous appeal applies only in 'egregious cases' with no 'reasonable legal or factual basis.'" Cooke v. Cooke, 2001 UT App 110, ¶ 14, 22 P.3d 1249 (citation omitted). Although we have noted a number of significant problems with Plaintiff's appeal, we cannot say that the appeal was so egregious that "all competent counsel"--much less an unrepresented party--"would recognize the arguments made on appeal are without merit." Farrell v. Porter, 830 P.2d 299, 302 (Utah Ct. App. 1992). We therefore decline to award fees and double costs.[2]

Affirmed.

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Gregory K. Orme, Judge

WE CONCUR:

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Russell W. Bench, Judge

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Judith M. Billings, Judge

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2. Defendants are, of course, entitled to undoubled costs by operation of rule 34. See Utah R. App. P. 34 (stating that if a judgment is affirmed, "costs shall be taxed against appellant").