

IN THE UTAH COURT OF APPEALS

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| James Tanne dba Geotopia International, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| |) | |
| Plaintiff and Appellant, |) | Case No. 20100469-CA |
| |) | |
| v. |) | F I L E D |
| |) | (September 2, 2010) |
| Gateway, Inc.; and |) | |
| Acer America Corporation, |) | 2010 UT App 244 |
| |) | |
| Defendants and Appellees. |) | |

Fourth District, Provo Department, 080402122
The Honorable Fred D. Howard

Attorneys: James Tanne, Lindon, Appellant Pro Se
George W. Pratt and Nathan D. Thomas, Salt Lake City,
for Appellees

Before Judges Orme, Voros, and Christiansen.

PER CURIAM:

James Tanne appeals the district court's May 7, 2010 order. This matter is before the court on a sua sponte motion for summary disposition for insubstantial question.¹ We affirm.

Tanne asserts that the district court erred by dismissing his amended complaint with prejudice. 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. This preservation rule applies to "every claim, including constitutional questions, unless a defendant demonstrates that 'exceptional circumstances' exist or 'plain error' occurred." Id. In order to preserve an issue for appeal, a party "must enter an objection on the record that is both timely and

¹Tanne requested oral argument on the sua sponte motion for summary disposition. This court may exercise its discretion and decline to hear oral argument. See Brown v. Glover, 2000 UT 89, ¶¶ 17-19, 16 P.3d 540. Accordingly, Tanne's request for oral argument is denied.

specific." State v. Rangel, 866 P.2d 607, 611 (Utah Ct. App. 1993). "The objection must 'be specific enough to give the trial court notice of the very error' of which [the party] complains." State v. Bryant, 965 P.2d 539, 546 (Utah Ct. App. 1998); see also Holman v. Callister, Duncan & Nebeker, 905 P.2d 895, 899 (Utah Ct. App. 1995) (a litigant's failure to raise an issue with the district court fails to preserve the claim for appeal).

The record indicates that on September 2, 2009, Acer America Corporation and Gateway, Inc. (collectively "Gateway") filed a motion to dismiss Tanne's amended complaint. Tanne failed to oppose the motion to dismiss. On October 23, 2009, the district court granted Gateway's motion to dismiss with prejudice on the ground that Tanne failed to oppose the motion for dismissal. Because Tanne failed to make a timely and specific objection to dismissal with prejudice, Tanne is unable to challenge the district court's dismissal of his amended complaint on appeal. See id. Tanne also failed to demonstrate that plain error or exceptional circumstances excused his failure to oppose dismissal with prejudice. Because Tanne failed to preserve this issue for appeal, we decline to address it.

Tanne next asserts that the district court erred by denying his motion to vacate the dismissal of his amended complaint. Tanne's motion was based on his claims that the dismissal should be vacated due to newly discovered evidence, that "Defendants are in default," and that the court should reconsider Tanne's motion to reconsider.

Rule 59(a)(4) defines newly discovered evidence as only that evidence which "by due diligence could not have been discovered at any earlier point." Utah R. Civ. P. 59(a)(4). The district court did not err in determining that the submitted press releases and articles published prior to July 5, 2009, were not newly discovered evidence as this evidence could have been discovered prior to the filing of the amended complaint. Furthermore, the district court did not err by determining that the entry of default against Gateway was inappropriate. Rule 12 of the Utah Rules of Civil Procedure contemplates that certain motions toll the time period for filing an answer. See Utah R. Civ. P. 12(a). Because Gateway timely filed a motion to dismiss, the district court did not err in denying Tanne's request for the entry of default against Gateway.

Accordingly, the district court's May 7, 2010 order is affirmed.²

Gregory K. Orme, Judge

J. Frederic Voros Jr., Judge

Michele M. Christiansen, Judge

²Tanne also asserts that he failed to receive the August 12, 2009 order on Gateway's motion to dismiss and that the district court erred by denying his request for oral argument. We determine that such issues lack merit, and we decline to address them further. See State v. Carter, 888 P.2d 629, 648 (Utah 1994). Insofar as Tanne endeavors to raise other issues not specifically addressed above, they are not presented with sufficient clarity to permit meaningful consideration.