

IN THE UTAH COURT OF APPEALS

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Tommy Torrez and Teresa	)	MEMORANDUM DECISION
Torrez,	)	(Not For Official Publication)
	)	
Plaintiffs and Appellees,	)	Case No. 20050266-CA
	)	
v.	)	F I L E D
	)	(October 14, 2005)
	)	
Juan Posada and Tanja Posada,	)	2005 UT App 444
	)	
Defendants and Appellants.	)	

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Third District, Salt Lake Department, 040925389  
The Honorable Anthony B. Quinn

Attorneys: Kenneth E. Bresin, Salt Lake City, for Appellants

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Before Judges Billings, McHugh, and Orme.

PER CURIAM:

Juan and Tanja Posada appeal the trial court's order awarding treble damages to Tommy and Teresa Torrez. The Posadas assert four issues on appeal. Only one issue was raised in the trial court and is properly before this court.

The Posadas assert the trial court erred in awarding treble damages for waste absent a finding of malice. However, the plain language of the statute mandates otherwise. The Torrezes' complaint asserted an unlawful detainer action pursuant to Utah Code section 78-36-3. See Utah Code Ann. § 78-36-3 (2002). A tenant is guilty of an unlawful detainer when the tenant "commits or permits waste on the premises . . . and remains in possession after service upon him of a three days' notice to quit." Id. § 78-36-3(1)(d). In an unlawful detainer action, the court "shall also assess the damages resulting to the plaintiff from . . . unlawful detainer [or] waste of the premises during the defendant's tenancy, if waste is alleged in the complaint and proved at trial." Id. § 78-36-10(2)(b)-(c) (2002). "The judgment shall be entered against the defendant for . . . three times the amount of damages assessed" for unlawful detainer or waste. Id. § 78-36-10(3).

The plain language of the statute requires the trial court to award treble damages resulting from waste. In addition to the clear statutory language, Utah case law has long held that the statute mandates treble damages for waste in unlawful detainer claims. "[I]n an unlawful detainer action 'the statute makes it mandatory upon the court to render judgment for three times the amount of damages thus assessed.'" Ute-Cal Land Dev. v. Intermountain Stock Exch., 628 P.2d 1278, 1282 (Utah 1981) (quoting Forrester v. Cook, 77 Utah 137, 292 P. 206, 214 (1930)). The trebling of damages is required upon a finding of waste, with no determination of malice needed.

The Posadas did not preserve the remaining issues for appeal. Upon review of the record, it is apparent that the remaining issues were not raised before the trial court. Instead, the Posadas assert in their brief that these issues were "preserved" in the notice of appeal. However, "[t]o preserve a substantive issue for appeal, a party must first raise the issue before the trial court." Hart v. Salt Lake County Comm'n, 945 P.2d 125, 129 (Utah Ct. App. 1997). Issues not raised in the trial court are deemed waived. See id. at 130. Thus, this court will not address these issues for the first time on appeal.

Accordingly, the judgment is affirmed.

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Judith M. Billings,  
Presiding Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge