

IN THE UTAH COURT OF APPEALS

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PP&T, LLC,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	Case No. 20070538-CA
	)	
v.	)	F I L E D
	)	(May 30, 2008)
John Brinar,	)	
	)	2008 UT App 198
Defendant and Appellant.	)	

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Third District, Salt Lake Department, 060905872  
The Honorable Vernice S. Trease

Attorneys: John Brinar, Pearlinton, Mississippi, Appellant Pro  
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Jared L. Bramwell and Steven M. Kelly, Salt Lake  
City, for Appellee

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Before Judges Thorne, Bench, and Orme.

PER CURIAM:

John Brinar appeals the district court's judgment entered on June 5, 2007. We affirm.

On appeal, Brinar first asserts that PP&T members filed affidavits consisting of perjured testimony. 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. To preserve the issue for appeal, a party "must enter an objection on the record that is both timely and 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). Furthermore, in order to permit meaningful appellate review, a party's brief must specify where in the record such alleged error occurred or was preserved. See State v. Garner, 2002 UT App 234, ¶ 8, 52 P.3d 467.

Brinar has failed to preserve this issue for appeal. Brinar did not appear for the evidentiary hearing that he had requested. Had he done so, Brinar would have had the opportunity to present evidence challenging the affidavits that allegedly consisted of

fraudulent testimony. By failing to attend the evidentiary hearing, Brinar waived his opportunity to properly object and preserve this issue for appellate review.<sup>1</sup>

Brinar next asserts that the trial court denied him due process by failing to telephone him when he did not appear at the March 5, 2007, pretrial conference. Brinar asserts that he was not given adequate notice of this hearing. The essential elements of due process mandate that a person whose rights are to be affected by court action must be given adequate notice and an opportunity to have the court review the issue raised by such party. See Chen v. Stewart, 2004 UT 82, ¶ 68, 100 P.3d 1177. A party asserting a violation of his due process rights must demonstrate that the alleged violation was harmful. See Lucas v. Murray City Civ. Serv. Comm'n, 949 P.2d 746, 755 (Utah Ct. App. 1997). In this context, a party must demonstrate that the alleged error was harmful because had the error otherwise not occurred, the trial court would have reached a different ruling. See id. Assuming that Brinar did not receive notice of the March 5, 2007 pretrial conference, the trial court remedied any harm by holding a second pretrial conference on March 19, 2007, solely for Brinar's benefit.

The record also demonstrates that Brinar was given multiple opportunities to have the trial court review his claims in an evidentiary hearing and that he also received adequate notice of the evidentiary hearing dates. Brinar attended the pretrial conference on March 19, 2007, wherein it was reiterated that the evidentiary hearing would be held on May 23, 2007. Thus, Brinar received adequate notice of the evidentiary hearing and had an opportunity to present his claims at that time. Accordingly, the record demonstrates that Brinar's due process rights were not violated.

Brinar next asserts that opposing counsel acted unethically and that this court should impose sanctions under rule 11 of the Utah Rules of Civil Procedure. The basis for this assertion is that opposing counsel did not inquire whether the trial court had attempted to telephone Brinar at the March 5, 2007 pretrial conference. This claim also fails for lack of preservation and is not properly before this court. Rule 11 of the Utah Rules of Civil Procedure governs sanctions and requires that parties comply with specific procedures for initiating rule 11 sanctions

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1. The record does not reflect that a proper motion to strike the allegedly fraudulent affidavits was ever filed. Thus, this issue was not preserved by the denial of a pretrial motion.

at the trial court level. Brinar did not comply with rule 11 procedure. See Utah R. Civ. P. 11(c)(1)(A).

Lastly, PP&T asserts that there are alternative grounds entitling it to an award of attorney fees on appeal and that it may also be entitled to an award of double costs. PP&T's primary basis for seeking attorney fees and costs on appeal is under Utah Code section 38-9a-205(3) (2008). Section 38-9a-205(3) provides "[a]fter a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney's fees." Id. If the trial court determines that a party is entitled to an award of attorney fees by law, the party may also recover its attorney fees on appeal. See Coates v. American Economy Ins. Co., 627 P.2d 92, 93 (Utah 1981). The trial court held a hearing on May 22, 2007, and notice was given to the affected parties. As requested in PP&T's petition for a civil wrongful lien injunction, the trial court awarded PP&T its attorney fees and costs under Utah Code section 38-9a-205(3). Thus, PP&T is entitled to its attorney fees and costs on appeal. Accordingly, we do not reach PP&T's alternative grounds for awarding it attorney fees and costs. However, we must address PP&T's request for double costs. Brinar's appeal was not frivolous. Thus, PP&T is not entitled to double costs under rules 33 and 34 of the Utah Rules of Appellate Procedure.

Accordingly, the trial court's judgment is affirmed and this matter is remanded to the trial court to determine PP&T's attorney fees on appeal.

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William A. Thorne Jr.,  
Associate Presiding Judge

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Russell W. Bench, Judge

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Gregory K. Orme, Judge