

IN THE UTAH COURT OF APPEALS

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Jason Cody,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20070802-CA
v.)	Case No. 20080641-CA
)	
Willard Lowe and Renee)	F I L E D
Hancock,)	(December 4, 2008)
)	
Defendants and Appellees.)	2008 UT App 440

Second District, Ogden Department, 070902903, 070902904
The Honorable Ernest W. Jones
The Honorable Roger S. Dutson

Attorneys: Jason Cody, Ogden, Appellant Pro Se
Branden B. Miles, Ogden, for Appellees

Before Judges Greenwood, Thorne, and Orme.

PER CURIAM:

Jason Cody appeals from the district court's orders dismissing his separate complaints against Willard Lowe and Renee Hancock for failure to state a claim for which relief can be granted.¹

Cody asserts that the district court denied him due process of law by dismissing his separately filed cases against Lowe and Hancock for failure to state a claim upon which relief can be granted when Lowe's and Hancock's responses to his complaints, in the form of separate motions to dismiss, were untimely. Even if this court were to assume for the sake of argument that the district court should not have considered the motions to dismiss, which were filed more than twenty days after service of the

1. Cody's appeal in the Lowe case was fully briefed by the parties. Cody's appeal in the Hancock matter is before the court on its own motion for summary disposition based upon insubstantial questions for review. The court has determined that it would be in all the parties' best interests to resolve both matters in one decision.

original complaints, the district court's orders must still be affirmed.²

When allegations in a complaint are not properly contested by an opposing party, they are deemed admitted. See Stevens v. Collard, 837 P.2d 593, 595 (Utah Ct. App. 1992), modified on other grounds, 863 P.2d 534 (Utah Ct. App. 1993). However, it does not necessarily follow that a party is automatically entitled to default judgment when those facts in a complaint are deemed admitted. See id. "A trial court asked to render a judgment by default must first conclude that the uncontroverted allegations of an applicant's petition are, on their face, legally sufficient to establish a valid claim against the defaulting party." Id. Thus, if Cody's complaint could not survive a motion to dismiss for failure to state a claim for which relief could be granted, Cody was likewise not entitled to default judgment. Cody failed to meet this baseline standard.

In the action against Lowe, the district court accepted every factual allegation Cody made in his complaint as true but then determined that Cody's "causes of action fail to state a claim upon which relief can be granted." The district court added, "[Cody] has either failed to support each claim with adequate factual support, or has failed to state a cognizable cause of action in compliance with the well-pleaded complaint rule." Accordingly, the district court dismissed the case because Cody's complaint was legally insufficient to establish a valid claim against Lowe. Likewise, in the action against Hancock, the district court found all claims to be frivolous and without merit. Thus, despite the fact that both rulings were in response to motions to dismiss, the rulings, by their nature, also demonstrate that Cody was not entitled to default judgments because his allegations were legally insufficient to establish valid claims. On appeal, Cody fails to challenge the district court's legal conclusions that his complaints failed to state claims for which relief could be granted. As a result, we do not consider the potential argument on appeal. See Gildea v. Guardian Title Co. of Utah, 2001 UT 75, ¶ 10 n.1, 31 P.3d 543 (stating that, generally, issues not raised by an appellant in his opening brief are considered waived and will not be considered).

2. There remains a significant issue whether Cody appropriately served his amended complaints on Lowe and Hancock. If he did not, then he was not entitled to default judgments. See Utah R. Civ. P. 15(a).

Accordingly, because the district court determined that the allegations in Cody's complaints were insufficient on their face to state a valid claim and Cody has not challenged these determinations, we must affirm in each case.³

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

Gregory K. Orme, Judge

3. In the Hancock appeal, Cody also alleges that the attorney who represented Hancock did so improperly because the attorney also acted as the prosecutor in Cody's criminal proceeding. However, Cody did not raise this argument in the district court. Accordingly, we do not review the issue here. See State v. Amoroso, 1999 UT App 60, ¶ 7, 975 P.2d 505 (stating that "[a]s a general rule, appellate courts will not consider an issue raised for the first time on appeal").