

IN THE UTAH COURT OF APPEALS

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Heritagewest Federal Credit	)	MEMORANDUM DECISION
Union fka Tooele Federal	)	(Not For Official Publication)
Credit Union,	)	
	)	Case No. 20100699-CA
Plaintiff and Appellee,	)	
	)	
v.	)	F I L E D
	)	(December 9, 2010)
	)	
<u>Scott D. Workman</u> ; and	)	2010 UT App 342
Rejuvenation, Inc.,	)	
	)	
Defendant and Appellant.	)	

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Third District, Salt Lake Department, 100900031  
The Honorable Robin W. Reese

Attorneys: Douglas R. Short, Johnathan M. Duncan, and Reef R.  
Pace, Salt Lake City, for Appellant  
Darwin H. Bingham and Ben A. Picklesimer, Salt Lake  
City, for Appellee

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Before Judges McHugh, Voros, and Christiansen.

PER CURIAM:

Scott D. Workman appeals the district court's July 12, 2010 judgment. This matter is before the court on a sua sponte motion for summary disposition. We affirm.

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 litigant 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 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).

On April 14, 2010, Heritagewest Federal Credit Union (Credit Union) filed a motion for summary judgment. Workman failed to oppose the motion for summary judgment. On June 11, 2010, the district court granted Credit Union's motion for summary judgment, noting that Workman failed to oppose the motion. Because Workman failed to oppose the motion for summary judgment, this court cannot reach his challenges to the order granting summary judgment as such claims were not preserved. See id. Workman also fails to demonstrate that plain error or exceptional circumstances excuse his failure to preserve his claims. Because Workman failed to preserve his challenges to the order granting summary judgment, we decline to address them.

Workman next asserts that the "judgment is void" because he was deprived of due process when Credit Union submitted its proposed judgment before the objection period had elapsed for Workman to challenge the form of the proposed judgment under rule 7(f)(2) of the Utah Rules of Civil Procedure. This court has previously determined that "nothing in rule 7(f)(2) requires the trial court to wait for a party's objection period prior to signing a proposed judgment or order." Henshaw v. Estate of King, 2007 Utah App 378, ¶ 25, 173 P.3d 876. "To the contrary, Utah case law indicates that the rules pertaining to the entry of proposed judgments and orders are binding only on the litigants and not the trial court." Id. Rule 7(f)(2) "places no restrictions on when the trial court may sign a proposed judgment or order." Id.

Furthermore, 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 an issue. See Chen v. Stewart, 2004 UT 82, ¶ 68, 100 P.3d 1177. Workman was given adequate notice and opportunity to oppose the motion for summary judgment and the award of attorney fees and costs. Workman fails to demonstrate that he was prejudiced by the submission of the proposed judgment prior to the expiration of the objection period or that he was denied due process. Thus, we cannot say that the district court erred by entering the proposed judgment before the expiration of the objection period under rule 7(f)(2).

Workman next asserts that the district court's judgment improperly awarded damages that were not part of the motion for summary judgment. Specifically, Workman asserts that while Credit Union's motion for summary judgment requested attorney fees, the request for attorney fees should have been made by a separate motion. Workman also asserts that the amount of attorney fees should have been determined in a hearing, rather than by affidavit. The decision to award attorney fees, and the amount thereof, rests within the sound discretion of the district

court. See Davis v. Davis, 2003 Utah App 282, ¶ 14, 76 P.3d 716. Rule 7(b)(1) of the Utah Rules of Civil Procedure states that an application to the court for any order shall be made by motion. See Utah R. Civ. P. 7(b)(1). Unless made during a hearing or trial, a motion shall be in writing and succinctly state with particularity the relief sought and the grounds for the relief. See id. Evidence supporting an award of attorney fees may be taken "by affidavit or live testimony." Promax Dev. Corp. v. Raile, 2004 UT 4, ¶ 12, 998 P.2d 254.

The record indicates that Credit Union's application to the court for an award of attorney fees was made within its motion for summary judgment, and the motion succinctly stated its request for attorney fees. Workman had the opportunity to object to the request for attorney fees but elected not to do so. Workman also fails to demonstrate that Credit Union was required to file a separate motion requesting attorney fees. Because Credit Union properly sought attorney fees in its motion for summary judgment, the district court did not abuse its discretion by awarding attorney fees or by allowing evidence supporting the award of attorney fees to be established by affidavit. See id.

Credit Union seeks its attorney fees and costs in defending the appeal. When the district court awards attorney fees below to the party who then prevails on appeal, we generally award attorney fees and costs on appeal. See Wall v. Wall, 2007 Utah App 61, ¶ 26, 156 P.3d 341. Credit Union was awarded attorney fees and costs below and it has prevailed on appeal. Accordingly, we award Credit Union its attorney fees and costs reasonably incurred on appeal and remand to the district court for a determination of such amount.

Affirmed.<sup>1</sup>

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Carolyn B. McHugh,  
Associate Presiding Judge

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J. Frederic Voros Jr., Judge

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Michele M. Christiansen, Judge

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<sup>1</sup>The parties' motions to strike are denied.