

IN THE UTAH COURT OF APPEALS

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Joseph Naso and Rene Naso)	MEMORANDUM DECISION
Evans,)	(Not For Official Publication)
)	
Plaintiffs and Appellees,)	Case No. 20080465-CA
)	
v.)	F I L E D
)	(November 13, 2009)
Younzong "Frank" Fu,)	
)	2009 UT App 324
Defendant and Appellant.)	

Third District, Salt Lake Department, 080905490
The Honorable Deno G. Himonas

Attorneys: Bradley G. Nykamp, Salt Lake City, for Appellant
Randy B. Birch, Heber City, for Appellees

Before Judges Bench, Orme, and McHugh.

ORME, Judge:

Plaintiffs filed a petition in the district court requesting an expedited proceeding, see Utah Code Ann. § 38-9-7(1), (3)(b) (2005), to determine whether the Notice of Interest that Defendant filed against certain properties was a wrongful lien, see id. § 38-9-1(6). Defendant filed an answer, counterclaims, and a third-party complaint. As concerns the Tolin property, the district court ruled against Defendant, and he now appeals that determination.

The expedited hearing focused on the Wrongful Lien Statute, which defined¹ a "wrongful lien" as

any document that purports to create a lien or encumbrance on an owner's interest in certain real property and at the time it is recorded or filed is not:

¹We cite to and discuss the version of the statute in effect at the time this dispute arose. The statute was amended in 2008 to add "notice of interest" to the definitional scheme. See Utah Code Ann. § 38-9-1(6) & amendment notes (Supp. 2009).

(a) expressly authorized by this chapter or another state or federal statute;

(b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or

(c) signed by or authorized pursuant to a document signed by the owner of the real property.

Id. Defendant's argument before the district court focused on subsection (c). The court consistently attempted to redirect the proceedings to subsection (a) instead of subsection (c), to no avail. Although Defendant cursorily agreed that subsection (a) applied, he continued to argue that the lien was authorized under subsection (c).

In appealing the court's ruling, Defendant now focuses his argument on subsection (a). He asserts that he has an equitable interest in the Tolin property, based on the substantial performance exception to the statute of frauds, and that the interest created may be protected by filing a Notice of Interest authorized by the Marketable Record Title Act, see id. § 57-9-1 (2000).

Although testimony may have supported this argument, we do not reach the argument's merits because this issue was not adequately raised below and, thus, not preserved for appeal. "Generally, 'in order to preserve an issue for appeal the issue must be presented to the trial court in such a way that the trial court has an opportunity to rule on that issue.'" Pratt v. Nelson, 2007 UT 41, ¶ 15, 164 P.3d 366 (citation footnote omitted). "[T]hree factors . . . help determine whether the trial court had such an opportunity: '(1) the issue must be raised in a timely fashion; (2) the issue must be specifically raised; and (3) a party must introduce supporting evidence or relevant legal authority.'" Id. (citation footnote and additional internal quotation marks omitted). "In short, a party may not claim to have preserved an issue for appeal by 'merely mentioning . . . an issue without introducing supporting evidence or relevant legal authority.'" Id. (omission in original) (citation footnote omitted).

The fact that record evidence may have supported the partial performance argument Defendant is now making does not excuse a failure to make that legal argument in the district court, including presenting "relevant legal authority," id. (citation footnote and internal quotation marks omitted), that would have apprised the district court of his specific legal argument and

how the evidence supported his position. Because those arguments were not presented to the district court in a way that would have given the court an opportunity to rule on the issues, we decline to address them on appeal. Nor does Defendant demonstrate that the plain error or exceptional circumstances exceptions entitle him to consideration of his argument on appeal despite the lack of preservation. See Lunt v. Lance, 2008 UT App 192, ¶¶ 23-24, 186 P.3d 978; Walter v. Stewart, 2003 UT App 86, ¶ 33, 67 P.3d 1042, cert. denied, 73 P.3d 946 (Utah 2003).

Affirmed.²

Gregory K. Orme, Judge

WE CONCUR:

Russell W. Bench, Judge

Carolyn B. McHugh, Judge

²We do not address Defendant's arguments regarding the trial court's dismissal of his counterclaims and the alleged violation of his due process rights because neither issue was adequately briefed. See generally Utah R. App. P. 24(a)(9). The parties will bear their own attorney fees incurred on appeal.