

IN THE UTAH COURT OF APPEALS

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Murray City,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellee,)	
)	Case No. 20080805-CA
v.)	
)	
Dwight W. Overgaard and)	F I L E D
Margaret R. Overgaard,)	(December 11, 2008)
)	
Respondents and Appellants.)	2008 UT App 459

Third District, Salt Lake Department, 060920284
The Honorable Robert P. Faust

Attorneys: Walter T. Keane, Salt Lake City, for Appellants
 Jody K. Burnett and Robert C. Keller, Salt Lake City,
 for Appellee

Before Judges Thorne, Bench, and McHugh.

PER CURIAM:

This case is before the court on (1) a sua sponte motion for summary affirmance because the appeal presents insubstantial questions for review and (2) Appellants' motion to vacate the district court's ruling and dismiss the case. Appellants Dwight W. and Margaret R. Overgaard filed this appeal following a September 8, 2008 Judgment in Rem that awarded Murray City (the City) costs incurred in repairing or replacing a failing retaining wall on the Overgaards' property and allowed the judgment to be recorded as a lien against the property. The Overgaards challenge the district court's June 11, 2007 order that granted an unopposed motion for judgment on the pleadings and authorized the City to perform the work and obtain a judgment against the property upon application to the court.

In its June 11, 2007 Findings, Conclusions and Order on the City's motion for judgment on the pleadings, the district court ordered that "[u]pon 10 days notice to the Overgaards," the City could cause the necessary work to be done. The court further ordered, "Upon completion of the work described above and upon application by the city, the Court will enter a judgment against the Property and/or the Overgaards for the costs of such repair

or replacement." The Overgaards did not oppose the motion for judgment on the pleadings or object to the June 11, 2007 order. The City completed the repairs authorized by that order. In April 2008, the City applied to the district court for judgment against the property for the costs of repair. The Overgaards opposed the City's application, arguing for the first time that the City's administrative process was flawed and that the district court erred in granting the City's motion for judgment on the pleadings roughly a year earlier. The district court granted the City's application to enter judgment against the property, ruling that the Overgaards "effectively [sought] to argue those points that should have been raised in response to Murray City's original Motion for Judgment on the Pleadings" and concluding that "the arguments are untimely and not properly before [the] Court."

Prior to the events in the district court, the Overgaards participated in a November 2004 hearing, at their request, before the Murray City Board of Appeals. In February 2005, the Board ordered that the retaining wall must be repaired or replaced. The Overgaards had the opportunity to raise any procedural issues regarding compliance with the Dangerous Building Code in the administrative proceeding. However, they did not seek judicial review of the Board's decision by the district court. See generally Utah Code Ann. § 10-9a-801(2)(a) (2007) (allowing a person adversely affected by a municipal land use decision to file a petition for review with the district court within thirty days after the final land use decision). A petition for judicial review of a local land use decision is barred "unless it is filed within 30 days after the appeal authority's decision is final." Id. § 10-9a-801(6). Furthermore, the City's motion for judgment on the pleadings sought an order allowing the City to abate the danger posed by the failing retaining wall on the Overgaards' property and charge the cost of the repair against the property. If the Overgaards wished to oppose that motion, their proper course was to file a memorandum in opposition within the ten days of the filing of the City's motion. The Overgaards did not do so, nor did they take any steps to challenge the June 11, 2007 order, which essentially allowed the City to enter their property on ten days' notice to repair or replace the wall at the Overgaards' expense and charge the expenses against their property.

"[A]s a general rule, claims not raised before the trial court may not be raised on appeal." Tschaggeny v. Millbank Ins. Co., 2007 UT 37, ¶ 20, 163 P.3d 615. This preservation rule gives "the trial court an opportunity to address the claimed error and, if appropriate, correct it." Id. Furthermore, "requiring preservation of an issue prevents a party from avoiding the issue at trial for strategic reasons only to raise

the issue on appeal if the strategy fails." Id. The Overgaards remained silent when the City moved for judgment on the pleadings. Only after the City had completed the repairs authorized by the June 11, 2007 order and applied for a judgment against the property did the Overgaards challenge the judgment on the pleadings. "Claimed errors should be raised before trial courts in such a manner that the trial courts have a meaningful opportunity to correct them." Id. ¶ 22. By not allowing the district court a meaningful opportunity to consider the challenges to the motion for judgment on the pleadings and the resulting June 11, 2007 order at any time before the City proceeded in reliance upon the order, the Overgaards waived these issues and failed to preserve a right to raise the issues on appeal. Furthermore, the Overgaards waived any challenge to the administrative proceedings completed prior to the district court action by failing to seek review of the decision of the Murray City Board of Appeals.

We affirm the judgment of the district court and deny the Overgaards' motion for summary reversal.

William A. Thorne Jr.,
Associate Presiding Judge

Russell W. Bench, Judge

Carolyn B. McHugh, Judge