

IN THE UTAH COURT OF APPEALS

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Rugby Pub, LLC; and Jerald Sarafolean,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
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Petitioners and Appellants,)	Case No. 20070955-CA	
)		
v.)	F I L E D	
)	(November 6, 2008)	
Department of Alcoholic Beverage Control,)		
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Respondent and Appellee.)		

Third District, Salt Lake Department, 070910861
The Honorable Glenn K. Iwasaki

Attorneys: Douglas A. Gubler and Joseph L. Anderson, Salt Lake City, for Appellants
Mark L. Shurtleff and Brent A. Burnett, Salt Lake City, for Appellee

Before Judges Bench, Davis, and Orme.

BENCH, Judge:

Rugby Pub, LLC, and Jerald Sarafolean (Petitioners) appeal the district court's dismissal of their petition for review of both the Department of Alcoholic Beverage Control's (the DABC) order imposing fines and costs against Petitioners and the DABC's order to show cause directing forfeiture of a compliance bond to cover the unpaid fines and costs. Petitioners claim that the district court erred in dismissing the petition for lack of jurisdiction, alleging (1) that the DABC's first order was not a final, appealable order and (2) that they timely filed their petition within thirty days of the DABC's second order, the order to show cause. "We determine whether an order is final as a matter of law." In re B.B., 2002 UT App 82, ¶ 4, 45 P.3d 527. "Whether a court has subject matter jurisdiction is a question of law that we review for correctness." Id. ¶ 5.

"Generally, 'a judgment is final when it ends the controversy between the parties litigant,'" id. ¶ 7 (quoting Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649), and "leav[es] no issues unresolved," Union Pac. R.R. v. Utah State Tax Comm'n,

2000 UT 40, ¶ 21, 999 P.2d 17. The first order, issued on April 27, 2007, was a final and appealable order because it resolved all the issues in controversy over Petitioners' alleged violations of Utah's alcohol laws. It determined that Petitioners were liable for the violations and imposed a fine and costs for such. Petitioners were required to appeal the DABC's final order within thirty days, see Utah Code Ann. § 63G-4-401(3)(a) (Supp. 2008) ("A party shall file a petition for judicial review of agency action within 30 days after the date that the order constituting final agency action is issued or is considered to have been issued under [the Utah Administrative Procedures Act]."), which they did not do. The district court therefore correctly concluded that it lacked jurisdiction to review this first order.

However, the district court erred in dismissing the Petitioners' petition for review of the second order, the order to show cause, for failure to timely file the petition. "[A]n action seeking enforcement of a final order is not a continuation of the [previous administrative adjudication]." Career Servs. Review Bd. v. Utah Dep't of Corr., 942 P.2d 933, 939 (Utah 1997). Rather, it is "a separate action to enforce the order in [the previous administrative] proceeding." Id. The order to show cause, issued on June 29, 2007, was the result of the DABC's attempt to collect the fines and costs from Petitioners' bonding company, and as such, it was a separate enforcement action. While the order to show cause did not extend the time to appeal from the first order, see id. ("The fact that agencies may seek enforcement of their orders against recalcitrant parties . . . does not mean that their decisions are not final until enforced."), the petition for review of the order to show cause was not jurisdictionally barred because Petitioners timely filed their petition for review of that order.

Nonetheless, we do not consider Petitioners' constitutional arguments because the arguments were raised for the first time on appeal. See Pratt v. City Council, 639 P.2d 172, 173-74 (Utah 1981) ("Issues not raised [before the lower court] cannot be raised on appeal. This general rule applies equally to constitutional issues . . ."). Although Petitioners argued that the plain error exception allows us to consider these constitutional issues for the first time on appeal, we decline to do so because Petitioners made this argument for the first time in their reply brief. See Allen v. Friel, 2008 UT 56, ¶ 8, 611 Utah Adv. Rep. 3 ("It is well settled that 'issues raised by an appellant in the reply brief that were not presented in the opening brief are considered waived and will not be considered by the appellate court.'" (quoting Brown v. Glover, 2000 UT 89, ¶ 23, 16 P.3d 540)).

We affirm the dismissal of the petition for review of the DABC's first order assessing fines and costs against Petitioners, but we remand to the district court for consideration of the merits of Petitioners' petition for judicial review of the DABC's second order, the order to show cause.

Russell W. Bench, Judge

WE CONCUR:

James Z. Davis, Judge

Gregory K. Orme, Judge