Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-087

JULY TERM, 2020

Daniel Banyai* v. Town of Pawlet	} APPEALED FROM:
	}
	} Superior Court, Rutland Unit,
	} Civil Division
	}
	} DOCKET NO. 668-12-19 Rdcv

Trial Judge: Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals pro se from the civil division's dismissal of his Rule 75 complaint. We conclude that the court properly dismissed the complaint as untimely and affirm.

This dispute apparently arises out of plaintiff's request for abatement of certain tax penalties incurred during the 2018-2019 tax year.[*] On July 16, 2019, the town board of abatement held a hearing that plaintiff attended. According to the minutes of the meeting, plaintiff argued that he was entitled to an abatement because the tax collector failed to mail his tax bill to his last known address at least thirty days prior to the date taxes were due, as required by 32 V.S.A. § 4772. He claimed that this was a manifest error that justified abatement. The board determined that the bill was sent to plaintiff in accordance with the statute. It denied his request for an abatement and concluded the hearing.

On July 23, 2019, plaintiff filed a small claims complaint against the Town, asserting that it had mailed his tax bill to the wrong address, and as a result his property was put up for a tax sale and he was charged penalties and interest. He sought $436 in damages. On December 9, 2019, the small claims court granted the Town's motion to dismiss the complaint for lack of subject matter jurisdiction. The court explained that appeals from decisions by municipal boards of abatement fall under Vermont Rule of Civil Procedure 75 and therefore were within the exclusive jurisdiction of the civil division of the superior court.

On December 23, 2019, plaintiff initiated this proceeding in the civil division by filing a complaint stating simply that he was seeking "compensation for tax fines/penalties" from the Town and citing as sources of law "U.S. Constitution" and "Vermont 30 day address." The Town moved to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim. It argued

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[*] The facts recited are drawn from materials attached to the Town's motion to dismiss. Because the Town asserted below and on appeal that the court lacked subject matter jurisdiction over plaintiff's complaint, we may consider these materials, even though we ultimately do not rest our decision on lack of subject matter jurisdiction. See Conley v. Crisafulli, 2010 VT 38, ¶ 3, 188 Vt. 11 (explaining that "[a] court may consider evidence outside the pleadings in resolving a motion to dismiss for lack of subject matter jurisdiction").

that Rule 75 was the only applicable avenue for relief, that the court in a Rule 75 action was confined to reviewing questions of law on the record, that plaintiff did not raise any substantial questions of law, and that plaintiff's sole requested relief, i.e., money damages, was unavailable in a Rule 75 action. The Town also argued that the complaint was untimely because it was brought more than thirty days after the decision being challenged. Plaintiff did not respond to the motion to dismiss. The court granted the motion "for the reasons set forth in the motion, which correctly set forth the law applicable to the case." This appeal followed.

Under 24 V.S.A. § 1535(a)(4), a municipal board of abatement "may abate in whole or in part . . . taxes in which there is a manifest error or mistake of the listers." "The language in the statute is entirely permissive and allows the Board to abate taxes, but does not require it to do so even if the taxpayer falls within one of the categories allowing for abatement." Garbitelli v. Town of Brookfield, 2011 VT 122, ¶ 14, 191 Vt. 76. Because the abatement statute does not specifically provide for review of abatement decisions, such decisions may only be appealed pursuant to Rule 75. Id. ¶ 5.

A Rule 75 complaint "shall be filed within 30 days after notice of any action . . . of which review is sought unless the court enlarges the time in accordance with Rule 6(b)." V.R.C.P. 75(c); Coutu v. Town of Cavendish, 2011 VT 27, ¶ 13, 189 Vt. 336 (recognizing requirement of timely filing under Rule 75 and affirming dismissal of untimely filed complaint). Plaintiff filed his Rule 75 complaint more than five months after the board of abatement denied his request for abatement. He did not request an enlargement of time from the trial court or otherwise respond to the Town's motion to dismiss. Although untimely filing of a Rule 75 complaint does not divest the trial court of jurisdiction over the subject matter, the court nevertheless had discretion to dismiss the complaint as time-barred. See Reporter's Notes, Rule 75 (explaining that time limit contained in rule is not jurisdictional); Coutu, 2011 VT 27, ¶ 13; cf. Clark v. Baker, 2016 VT 42, ¶ 20, 201 Vt. 610 (reviewing decision on motion for retroactive extension of time for abuse of discretion). We therefore decline to disturb its decision.

Plaintiff argues in his brief that he is a victim of bias by the Town and was deprived of due process. Plaintiff did not raise these arguments below, either in his complaint or in a response to the Town's motion to dismiss. A party must raise an issue with specificity at the trial court level to allow the trial court an opportunity to address it. In re White, 172 Vt. 335, 343 (2001). This rule applies in the context of motions to dismiss. See Gilman v. Maine Mut. Fire Ins. Co., 2003 VT 55, ¶ 12 n.2, 175 Vt. 554 (declining to address issue raised for first time on appeal from dismissal of complaint). Because plaintiff did not preserve these issues for our review, we will not address them.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

_____
Beth Robinson, Associate Justice

_____
Karen R. Carroll, Associate Justice