

**IN THE SUPREME COURT OF THE STATE OF UTAH**

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MARK CHRISTOPHER TRACY

Petitioner,

v.

SIMPLIFI COMPANY, JENNIFER  
HAWKES, and ERIC HAWKES

Respondents Below.

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Supreme Court No.

Appellate Court No. 20210227-CA

District Court No. 200905074

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**PETITION FOR WRIT OF CERTIORARI**

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*On Petition for Writ of Certiorari to the Utah Court of Appeals*

*Appeal from the Granted Dismissal of De Novo Judicial Review of the Denied Request  
for Government Documents Regarding Groundwater Mining in Emigration Canyon and  
Award of Attorney Fees and Costs Against a Federal Whistleblower Issued  
by the Honorable Mark S. Kouris, Presiding Judge of the  
Utah State Third District Court*

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Simplify Company, Jennifer Hawkes,  
and Eric Hawkes*

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	v
INTRODUCTION.....	1
QUESTIONS PRESENTED FOR REVIEW.....	2
OPINION BELOW.....	2
JURISDICTION.....	2
CONTROLLING PROVISIONS.....	2
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
I. Petitions for Disclosure of Government Records of Lead Contamination of Drinking Water and Groundwater Mining in Emigration Canyon .....	3
II. Refusal to Stay Proceedings of the Groundwater Mining Lawsuit During Appellate Review of the Lead Contamination Lawsuit by the District Court .....	5
III. Summary Disposition of Groundwater Mining Lawsuit by the Utah Court of Appeals Based Upon a Non-Existent Dispositive Ruling.....	5
ARGUMENT .....	6
I. Summary of Argument.....	6
II. The Court of Appeals Issued No Dispositive Ruling in the Lead-Contamination Lawsuit .....	6
III. The Court of Appeals Failed to Determine that the Groundwater-Mining Lawsuit was Meritless and Identify Any Action Taken in Violation of Utah Code Ann. §78B-5-825(1).....	7
CONCLUSION .....	8
CERTIFICATE OF SERVICE .....	9

## **ADDENDA**

A. *Memorandum Decision and Order* [Groundwater Mining Lawsuit], Utah Third District Court, February 24, 2021.

B. *Order* [Lead Contamination Lawsuit], Utah Court of Appeals, September 14, 2021.

C. *Order of Summary Affirmance* [Groundwater Mining Lawsuit], Utah Court of Appeals, January 24, 2022.

D. Controlling Provisions.

## TABLE OF AUTHORITIES

### CASES

<i>Bailey v. Bayles</i> , 2002 UT 58.....	8
<i>Emigration Canyon Home Owners Association v. Kent L. Jones and Emigration Improvement District</i> , No. 20200295 (Utah Ct. App., filed February 25, 2019).....	3
<i>State v. Johnson</i> , 2017 UT 76.....	7
<i>Patterson v. Patterson</i> , 2011 UT 68 .....	7
<i>Tracy v. Simplifi Company et al.</i> , No. 20210754 (Utah, Petition for Writ of Certiorari denied December 8, 2021)...	4
<i>Tracy v. Simplifi Compay et al.</i> , No. 2:21-cv-444-RJS-CMR (D. Utah, filed July 7, 2021) .....	3
<i>United States of America ex rel. Mark Christopher Tracy v. Emigration Improvement District et al.</i> , No. 21- 4059 & 21- 4059 (10th Cir., Response Order November 29, 2021).....	3

### STATUTES

Utah Code Ann. § 63G-2-103(11)(b)(i) .....	5
Utah Code Ann. § 63G-2-204(1)(a).....	4
Utah Code Ann. § 78A-3-102(3)(a) .....	2
Utah Code Ann. § 78B-5-825(1).....	1, 2, 6

## RULES

Utah R. Civ. P. 4(a)(2).....	5
Utah R. App. P. 10(a)(2) .....	1, 6
Utah R. App P. 42(a).....	3
Utah R. App P. 45.....	2

## **Introduction**

Upon submittal to this Court and subsequent referral for disposition,<sup>1</sup> a panel of the Utah Court of Appeals summarily affirmed the district court's dismissal of the petition for de novo judicial review of the denied request for government records in the sole possession of the Respondents believed to evidence groundwater mining in Emigration Canyon based upon a purported "dispositive" ruling issued during appellate review. The court likewise summarily affirmed an award of \$5,785.00 in attorney fees and costs against a federal whistleblower with a cursory conclusion that the district court had "identified several factors that demonstrated a lack of good faith" but failed to determine that the litigation was meritless and did not identify any violation of Utah Code Ann. § 78B-5-825(1).

This Court should vacate the summary disposition under Utah R. App. P. 10(a)(2) and instruct the Utah Court of Appeals to set the briefing schedule.

## **Questions Presented for Review**

**Question No. 1:** Did the Utah Court of Appeals violate the due process clause of the XIV Amendment, United States Constitution, this Court's rulings on procedural regularity and fairness when it summarily affirmed a judgement based upon a non-existent dispositive ruling?<sup>2</sup>

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<sup>1</sup> Utah R. App. P. 42(a).

<sup>2</sup> Neither this Court nor the Court of Appeals has ever ruled that the designated Public Records Office of a governmental entity and controlling shareholders in sole possession of public records are exempt from Utah Governmental Records Access and Management Act. This issue is central to the district court's dismissal of the present litigation and an award of attorney fees and costs.

**Question No. 2:** Must the appellate court determine that an action is “meritless” and identify an uncontested violation of Utah Code Ann. §78B-5-825(1) prior to summarily affirming an awarded of attorney fees and costs against a federal whistleblower?

### **Opinion Below**

The unpublished opinion of the Utah Court of Appeals in *Tracy v. Simplifi et. al.*, Case No. 20210743-CA [Lead-Contamination Lawsuit] and summary disposition in Case No. 20210227-CA [Groundwater-Mining Lawsuit] are attached as Addenda B and C.

### **Jurisdiction**

The Utah Court of Appeals issued a summary affirmation of the district court’s dismissal of de novo judicial review of the denied request for public records and award of attorney fees and costs. This Court has jurisdiction pursuant to Utah Code Ann. § 78A-3-102(3)(a) and Utah R. App. P. 45.

### **Controlling Provisions**

Amendment XIV, United States Constitution, and Utah R. App. P. 10(a)(2), are attached as Addendum D.

### **Statement of the Case**

The instant Petition documents the Utah Court of Appeals’ summary dismissal of a perfected appeal and the appellate court’s failure to comply with the Utah Rules of Appellate Procedure when affirming an award of attorney fees and costs against a federal whistleblower exercising a constitutionally protected right to view and inspect government records in the sole possession of the designated Public Records Office and controlling shareholders.



The instant Petition for Writ of Certiorari to the Utah Court of Appeals is necessary and appropriate.

### **Statement of Facts**

#### **I. Petition for Disclosure of Government Records of Lead Contamination of Drinking Water and Groundwater Mining in Emigration Canyon.**

In September 2014, Mr. Tracy commenced legal action under the federal False Claims Act (“FCA”) against Respondent Eric Hawks (“Defendant Hawkes”), Emigration Improvement District (“Defendant EID”), and private land-developers Kem Gardner, Walter J. Plumb III and the former CEO of Energy Solutions, Inc., and Defendant EID Advisory Committee Chairman R. Steve Creamer *et. al.*, in what has alleged to be the longest, most lucrative, and perhaps most economically destructive water grabs in the history of the State of Utah.<sup>3</sup>

To secure public records relevant to pending state and federal litigation against Defendant EID, Defendant Hawkes and current legal counsel Jeremy R. Cook of the Salt Lake City law firm Cohne Kinghorn P.C. (“Utah Attorney Cook”)<sup>4</sup> *et al.* in the sole custody of the Respondents Simplifi Company, Defendant Hawkes and Jennifer Hawkes as the designated “EID Public Records Office” (collectively hereafter “Simplifi Respondents”),<sup>5</sup>

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<sup>3</sup> See *e.g.*, audio-video recording entitled “Aerial and Ground Recording of the Emigration Oaks PUD (YouTube)” available at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=3310](https://echo-association.com/?page_id=3310); *United States of America ex rel. Mark Christopher Tracy v. Emigration Improvement District et al.*, No. 21-4059 & 21-4059 (10th Cir., Response Order November 29, 2021) and *Emigration Canyon Home Owners Association v. Kent L. Jones and Emigration Improvement District*, No. 20200295 (Utah Ct. App., filed February 25, 2019).

<sup>4</sup> *Tracy v. Simplifi et al.*, No. 2:21-cv-444-RJS-CMR (D. Utah, filed July 7, 2021).

<sup>5</sup> See Utah Code Ann. § 63G-2-103(11)(b)(i).

Mr. Tracy submitted lawful requests under the Utah Government Records Access and Management Act (“GRAMA”) to Simplifi through Defendant Hawks as the “EID certified public records officer” registered with the Utah Ombudsman.

Upon refusal to disclose lead contamination laboratory test results of public drinking water (“Lead-Contamination Lawsuit”) required to be maintained on the business premises of Simplifi and following receipt of a duplicitous data file from Defendant Hawkes believed intended to conceal Groundwater Mining of Emigration Canyon aquifers (“Groundwater-Mining Lawsuit”), Mr. Tracy filed two (2) Petitions for Judicial Review of Denied Request for Disclosure of Public Records, Injunction for Willful Violations of the Utah Government Records Access and Management Act (“GRAMA”), and attorney fees and cost against Simplifi Respondents but initially withheld service of process of the later.<sup>6</sup>

Contrary to the prevailing view of state and federal authorities including express provisions of the federal Safe Drinking Water Act of 1974 requiring lead contamination records to be maintained on the premises of Simplifi for inspection and review, Utah State Third District Court judge Robert P. Faust ruled that a private Utah corporation and controlling shareholders in sole possession of public records are exempt from GRAMA in its entirety.

Mr. Tracy appealed.<sup>7</sup>

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<sup>6</sup> Defendant EID has no employees, no physical presence separate from the private residence of Simplifi Respondents, and retains no public records per Utah Code Ann. § 63G-2-204(1)(a).

<sup>7</sup> *Tracy v. Simplifi Company et al.*, No. 20210754 (Utah, Petition for Writ of Certiorari denied December 8, 2021). Simplifi Respondents failed neither response nor opposition to the petition.

## **II. Refusal to Stay Proceedings of the Groundwater Mining Lawsuit During Appellate Review of the Lead Contamination Lawsuit by the District Court.**

During appellate review of the Lead-Contamination lawsuit, Mr. Tracy served Simplifi Respondents the Groundwater-Mining Lawsuit required under Utah R. Civ. P. 4 but took no further action regarding the same.

Upon motion to dismiss by Simplifi Respondents, Utah Third District Court Judge Mark S. Kouris refused to stay proceedings during appellate review of the Lead-Contamination GRAMA lawsuit, granted dismissal, and awarded Simplifi Respondents attorney fees against Mr. Tracy in the amount of \$5,758.50.

Mr. Tracy appealed.

## **III. Summary Disposition of Groundwater Mining Lawsuit by the Utah Court of Appeals Based Upon a Non-Existent Dispositive Ruling**

In the Lead-Contamination lawsuit, the Utah Court of Appeals, determined that it was unable to determine if GRAMA applies to a public records office organized as a private Utah corporation funded entirely with public funds under Utah Code Ann. § 63G-2-103(11), as the GRAMA request transmitted to Simplifi had only identified the governmental entity and not Simplifi Respondents in the block entitled “Governmental Entity *or* Public Records Office” (emphasis added).

Following its decision, the Court of Appeals however ruled that its previous decision in the Lead-Contamination Lawsuit was “dispositive” of the Groundwater-Mining Lawsuit regarding the alleged willful manipulation of government records by Simplifi Respondents.

Although the Court of Appeals had not previously reviewed an award of attorney fees and costs in the Lead-Contamination Lawsuit, the court summarily affirmed, although Mr. Tracy had expressly petitioned the district court to stay proceedings during appellate review of the Lead-Contamination lawsuit and took no action in violation of Utah Code Ann. § 78B-5-825(1).

## **Argument**

### **I. Summary of Argument.**

As the Utah Court of Appeals failed to determine if GRAMA applies to a private Utah corporation and controlling shareholders in sole possession of public records in the Lead-Contamination Lawsuit, it may not summarily dispose of the Groundwater Mining Lawsuit bases upon a purported “dispositive” ruling.

Moreover, as the Court of Appeals failed to determine if the present action was “without merit” and did not identify any action taken by Mr. Tracy in violation of Utah Code Ann. § 78B-5-825(1), it lacks statutory basis under Utah R. App. P. 10(a)(2) to summarily dismiss a perfected appeal.

### **II. The Court of Appeals Issued No Dispositive Ruling in the Lead-Contamination Lawsuit.**

In the Lead-Contamination Lawsuit, the Court of Appeals ruled that it was unable to determine if GRAMA provisions apply to the designated public records office and shareholders in sole possession of public records (Add. B).

In *State v. Johnson*, 2017 UT 76, this Court recognized that the Utah appellate system is founded on the premise that parties are in the best position to select and argue

the issues most advantageous to themselves, while allowing an impartial tribunal to determine the merits of those arguments. Citing *Patterson v. Patterson*, 2011 UT 68, ¶ 16, ("Under our adversary system, the responsibility for detecting error is on the party asserting it, not on the court."). Moreover, when a party fails to raise and argue an issue in the trial court, it has failed to preserve the issue, and an appellate court will not typically reach that issue absent a valid exception to preservation. *Id.*

The exceptions to this rule are however allowed in instances of plain error, ineffective assistance of counsel, and exceptional circumstances.

In the present case, no exceptions are documented in the trial and/or appellate record and the district court failed to determine that the GRAMA request was not submitted to Simplifi Respondents as the designated Public Records Office (Add. A).

### **III. The Court of Appeals Failed to Determine That the Groundwater Mining Lawsuit was Meritless and Identify Any Action Taken in Violation of Utah Code §78B-5-825(1).**

The Court of Appeals ruled that the district court had “identified several factors that demonstrated a lack of good faith, including the pursuit of the current action after having notice that it was defective.” (Add. C.)

This cursory recital of facts is not supported by the court record.

This Court has held that the Court of Appeals may affirm a decision of the district court on alternative grounds, ““if it is sustainable on any legal ground or theory apparent on the record, even though such ground or theory differs from that stated by the trial court to be the basis of its ruling or action, and this is true even though such ground or theory is

not urged or argued on appeal by appellee, was not raised in the lower court, and was not considered or passed on by the lower court.” *Bailey v. Bayles*, 2002 UT 58, ¶10.

In the present case, it is undisputed that Mr. Tracy expressly requested that the district court stay proceedings during appellate review of the Lead-Contamination Lawsuit and took no action to prosecute the action other than complying with the service requirements pursuant to Utah R. Civ. P. 4.

### **CONCLUSION**

For the foregoing reasons, this Court should grant the petition for certiorari, vacate the summary affirmance of the Utah Court of Appeals and remand for further proceedings.

DATED this 23rd day of February 2022.

MARK CHRISTOPHER TRACY

/s/ Mark Christopher Tracy

Mark Christopher Tracy

*Pro Se* Petitioner

## CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February 2022, a true and correct copy of the foregoing **PETITION FOR WRIT OF CERTIORARI** was sent via electronic mail pursuant to Utah R. of App. P. 26(b) to the following counsel of record. Two (2) paper copies will be provided upon request:

Jeremy R. Cook  
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*Attorney for Respondents Below*  
*Simplifi Company, Jennifer Hawkes, and Eric Hawkes*

/s/ Mark Christopher Tracy  
Mark Christopher Tracy

**Addendum A. Memorandum Decision and Order [Groundwater Mining Lawsuit]  
of the Utah Third District Court**

**February 24, 2021**



**The Order of the Court is stated below:**

**Dated:** February 24, 2021  
01:34:01 PM

/s/ MARK KOURIS  
District Court Judge



*Prepared and Submitted by:*

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**IN THE THIRD DISTRICT COURT  
IN AND FOR THE STATE OF UTAH**

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MARK CHRISTOPHER TRACY, DBA  
EMIGRATION CANYON HOME OWNERS  
ASSOCIATION,

Petitioner,

vs.

SIMPLIFI COMPANY, a Utah Corporation,  
ERIC HAWKES, an individual, and  
JENNIFER HAWKES, an individual

Respondents.

**MEMORANDUM DECISION AND  
ORDER**

Case No. 200905074

Judge: Kouris

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This case is a petition for *de novo* judicial review of a denial of a request for documents pursuant to the Utah Government Records Access and Management Act ("GRAMA"). This matter is before the Court on Respondents' Motion to Dismiss. Oral arguments were held on February 10, 2021.

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As background, Emigration Improvement District (“EID”) is a local district that is subject to GRAMA. On June 10, 2020, petitioner Mark Christopher Tracy (“Mr. Tracy”) sent an email to EID’s records officer, Eric Hawkes (“Mr. Hawkes”) at the email address “eric@ecid.org.” The email included a GRAMA request form requesting telemetry data for EID’s water wells and water tanks (the “GRAMA Request”). The GRAMA request form correctly designated the governmental entity as EID.

On June 27, 2020, Mr. Tracy sent an email to Mr. Hawkes acknowledging receipt of a different GRAMA request for a link to a Zoom meeting of EID’s board of trustees, and appealing the *de facto* denial of the GRAMA request for the telemetry data. On July 9, 2020, Mr. Hawkes sent an email to Mr. Tracy that stated: “We can get the raw data files copied to a memory stick in Windows Format. The cost would be \$60 for an estimated one hour of labor, memory stick, and postage. The software needed for the "raw data" is LGH File Inspector available at Softwaretoolbox.com. The alternative option is to provide the data to you in an excel format, however the cost would be an estimated \$3000.00 for the software and the engineer/ IT to extract the data to an excel file. Please let me know how you would like to proceed.”

On July 15, 2020, at the request of Mr. Tracy, Mr. Hawkes emailed a link to a “zip” file that contained all of the telemetry data from 2004 to present. In the email, Mr. Hawkes stated: “The following link is the data files for EID’s In Touch Telemetry as per your request to have the data files emailed. The files go from 2004 to present. Again the data can be converted to an excel file, but would require EID to purchase software and a consultant to complete the process and a

fee would be associated with completing the task. Let me know if you have any questions regarding the GRAMA.”

In accordance with Utah Code Ann. § 63G-2-401, on July 17, 2020, Mr. Tracy sent an email to EID’s Chief Administrative Officer, Michael Scott Hughes, appealing the purported denial of the GRAMA request. Mr. Tracy’s basis for the appeal was that the water levels reported in EID’s board of trustees meeting on May 5, 2016 didn’t reflect the data provided by EID in response to the GRAMA request, and EID should have provided the data in Microsoft Excel format at no cost. Throughout the appeal to Mr. Hughes, Mr. Tracy indicated that the governmental entity was EID. A copy of the appeal is attached as Exhibit CC of the Petition. After the appeal to the Chief Administrator of EID was denied, Mr. Tracy filed the instant appeal.

However, instead of bringing the action against EID, Mr. Tracy named only Eric Hawkes, Jennifer Hawkes and Simplifi Company (“Respondents”). GRAMA provides that a records request must be made to a governmental entity. *See* Utah Code Ann. § 63G-2-204(1)(a) (“A person making a request for a record shall submit to the governmental entity that retains the record a written request . . .”). GRAMA further provides that a requester may petition for judicial review of the decision of the chief administrative officer of the governmental entity. *See* Utah Code Ann. § 63G-2-404(1) (“If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401 is to affirm the denial of a record request, the requester may: (a)(ii) petition for judicial review of the decision in district court.”) EID is the governmental entity. The records are public records because they are records of EID. Accordingly, EID is a necessary party.

In contrast, Respondents are not governmental entities. *See* Utah Code Ann. § 63G-2-103(11). Mr. Tracy failed to cite any case law to support the position that Respondents are proper or necessary parties to this action; or cite any provision or language in GRAMA supporting the position he can sue an individual or private company based on a governmental entity's alleged failure to respond to a GRAMA request.

The Court further finds that an award of attorney fees is proper. Utah Code Ann. § 78B-5-825(1) calls for an award of attorney fees in civil actions when “the court determines that the action or defense to the action was without merit and not brought or asserted in good faith.” This provision requires proof on “two distinct elements.” *In re Discipline of Sonnenreich*, 2004 UT 3, ¶ 46, 86 P.3d 712. An award of fees under this provision requires a determination that the losing party's claim was “(1) without merit, and (2) not brought or asserted in good faith.” *Id.*

As set forth above, this action was without merit. The action was also not brought in good faith. First, the majority of the allegations in the Petition have nothing to do with a purported appeal of the denial of a GRAMA request for telemetry data. In fact Mr. Tracy does not reference the actual GRAMA request until paragraph 49 of the Petition, and the GRAMA form that is the purported basis of the appeal is Exhibit AA of the Petition. The vast majority of the allegations and exhibits relate to other complaints and issues that Mr. Tracy has with EID or Respondents, and are not necessary or proper for this action.

Second, Mr. Tracy's GRAMA request, appeal to the chief administrative officer of EID, and this appeal, establish that Mr. Tracy understood that EID was the governmental entity. There is no evidence that EID has ever taken the position that the telemetry data was not a public

record of EID, or that Mr. Tracy has any reason to believe it was necessary to sue Respondents to obtain EID's records. The GRAMA request was made to EID, and EID responded and provided the request data to Mr. Tracy. The Court is not persuaded that Mr. Tracy believed he had any legitimate basis to sue Respondents, and his motivation for suing Respondents, as opposed to EID, was simply to harass Respondents.

Third, throughout the Petition and his argument, Mr. Tracy refers to Mrs. Hawkes as Deputy Mayor Hawkes. Mr. Tracy has not alleged that Mrs. Hawkes had any involvement with EID's response to the GRAMA request, or that her position as Deputy Mayor of a separate governmental entity has any relevance to this action. Instead, her inclusion in this matter, and Mr. Tracy's reference to her position as Deputy Mayor of Emigration Canyon Metro Township, is indicative of the fact that the Petition is not about obtaining records from EID, but is instead about attacking and harassing Mr. and Mrs. Hawkes.

Finally, on September 16, 2020, Judge Faust issued a *Memorandum Decision and Order* addressing the identical issue in this action. See Case No. 200905123. Judge Faust determined that EID was a necessary party and that there was no basis to sue Respondents. *Id.* Instead of amending the Petition to properly name EID, Mr. Tracy served and prosecuted this action after the decision of Judge Faust, and after knowing that there was no legal basis for suing Respondents.

In summary, the Court grants Respondents' motion to dismiss and the Court awards Respondents their reasonable attorney fees against Mark Christopher Tracy. Respondents shall

submit a declaration of their attorney fees. This Memorandum and Order constitutes the Order regarding the matters addressed herein. No further order is required.

————— **COURT’S SIGNATURE AND DATE APPEAR AT TOP OF** —————  
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**Addendum B. Order [Lead Contamination Lawsuit] of the Utah Court of Appeals**

**September 14, 2021**

FILED  
UTAH APPELLATE COURTS

SEP 14 2021

IN THE UTAH COURT OF APPEALS

MARK CHRISTOPHER TRACY, Appellant, <i>v.</i> SIMPLIFI COMPANY, JENNIFER HAWKES, AND ERIC HAWKES, Appellees.	ORDER  Case No. 20200705-CA
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Before Judges Christiansen Forster, Harris, and Hagen.

Mark Christopher Tracy filed a petition for review in the district court complaining that Simplifi Company, Jennifer Hawkes, and Eric Hawkes (collectively, Respondents) had violated Utah's Government Records Access and Management Act (GRAMA), and asking the court for an injunction and other relief. Respondents filed a motion asking the district court to dismiss Tracy's petition. The court granted that motion, and Tracy now appeals. We affirm the district court's determination, and we do so in this unpublished order. Our rules of appellate procedure empower us to decide any case in an expedited manner, without issuing a published opinion; we elect to do so here, determining on our own motion that this matter is appropriate for such disposition. *See* Utah R. App. P. 31(a) ("The court may dispose of any qualified case under this rule upon its own motion before or after oral argument."); *id.* R. 31(b)(1), (5).

Emigration Improvement District (the District) is a governmental entity created by Salt Lake County that is authorized to provide water and sewer services to houses located in Emigration Canyon. Eric Hawkes is the District's representative and its designated records officer. Simplifi is a private company contracted to operate and maintain the public water system owned by the District. Eric and Jennifer Hawkes are directors of Simplifi.

On July 2, 2020, Tracy submitted a GRAMA request via email to the District. On its face, the request was made to "Emigration Improvement District," and was not directed to any of the Respondents. The request was delivered to Eric Hawkes, at his official District email address (eric@ecid.org), apparently in his capacity as the District's designated records officer. The request was not sent to any email associated with Simplifi or Jennifer Hawkes. In the request, Tracy sought "[a]ll laboratory test results



(“chemical analysis”) for the presence of lead contamination in public drinking water system No. ‘18143’ (Emigration Improvement District) for the past ten (10) years.” Tracy also asked for an expedited response to the request.

On July 9, 2020, Eric Hawkes, on behalf of the District, responded by email to Tracy’s GRAMA request, stating as follows:

The District received your GRAMA request regarding the Lead Testing for the past 10 years. Your request for an expedited response has been denied. We are looking at the costs associated with providing this information to you and will get back with you as soon as possible.

Tracy considered this response a complete denial of his GRAMA request—a position apparently not shared by the District, who viewed the July 9 email as a denial only of the request for expedited treatment—and subsequently appealed the denial to the District’s chief administrative officer.

On July 27, 2020, Eric Hawkes, on behalf of the District, sent another email to Tracy, this time stating as follows:

I have attached a copy of the results of the latest lead & copper testing. I believe you have already received the previous testing results from [the Utah Division of Drinking Water] as per your [separate] GRAMA request. Thank you for your patience as we have been processing these results and working with [the Utah Division of Drinking Water]. The District has sent the homeowners a copy of their results and sent a public notice to water users on the copper results. Please let me know if you have any questions.

About two weeks later, Tracy filed a petition for judicial review of the allegedly denied GRAMA request and requested an injunction along with an award of attorney fees. *See* Utah Code Ann. §§ 63G-2-404, -802 (LexisNexis 2019) (establishing the procedure for seeking judicial review of a denied GRAMA request, and authorizing a district court to enjoin a governmental entity and award attorney fees under GRAMA when appropriate). Importantly, Tracy’s petition did not name the District as a respondent from whom relief was sought; instead, the petition named Respondents as the parties from whom relief was sought. In the petition, however, Tracy clearly identified the GRAMA request at issue as the one he submitted to the District on July 2, 2020. Indeed, a copy of that GRAMA request was attached to the petition, and (as noted

above) that GRAMA request was directed only to the District, and not to any of the Respondents.<sup>1</sup>

Instead of answering the petition, Respondents filed a motion, pursuant to Utah Rule of Civil Procedure 12(b)(6), asking the court to dismiss Tracy's petition. In the motion, Respondents asserted that Tracy had failed to state a claim upon which relief could be granted because there was "no basis for [Tracy] to sue Simplifi, Mr. Hawkes, and Mrs. Hawkes based on a claim that the Emigration Improvement District ('the District') did not respond to a GRAMA request." The district court ultimately granted Respondents' motion to dismiss, concluding among other things that Respondents were not proper parties to the action and Tracy was entitled to no relief against them.

Tracy now appeals. "A ruling on a motion to dismiss presents a legal question that we review for correctness, affording no deference to the district court's decision." *Turner v. Staker & Parson Cos.*, 2012 UT 30, ¶ 7, 284 P.3d 600. "A motion to dismiss is appropriate only where it clearly appears that the plaintiff would not be entitled to relief under the facts alleged or under any set of facts he could prove to support his claim." *Larsen v. Davis County School Dist.*, 2017 UT App 221, ¶ 9, 409 P.3d 114 (quotation simplified).

"GRAMA establishes a process through which an individual may request access to a government record." *McKittrick v. Gibson*, 2021 UT 48, ¶ 20 (citing Utah Code Ann. § 63G-2-204(1)). "And when a governmental entity denies such a request, GRAMA establishes a process to appeal that decision." *Id.* (citing Utah Code Ann. §§ 63G-2-401 to -404, -701(5)–(6)). Specifically, GRAMA permits a party to file "[a] petition for judicial review of an order or decision." *See* Utah Code Ann. § 63G-2-404(1)(a).

In the present case, Tracy apparently attempted to seek judicial review of the District's alleged denial of a GRAMA request he made to and served upon the District on July 2, 2020. But Tracy did not name the District as a party to this action. Instead, he filed his action against Respondents, none of whom—at least according to the allegations set forth in the petition<sup>2</sup>—were ever named in a GRAMA request. Tracy has

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1. In deciding whether to grant a motion to dismiss, courts may properly consider documents attached to the complaint, in addition to the complaint itself. *See Oakwood Village LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 10, 104 P.3d 1226.

2. In reviewing a district court's order dismissing a case for failure to state a claim, "we assume the truth of the factual allegations in the complaint and draw all reasonable inferences therefrom in the light most favorable to the plaintiff." *See Fehr v. Stockton*, 2018 UT App 136, ¶ 8, 427 P.3d 1190 (quotation simplified).

no grounds to bring an action against Respondents for judicial review of a denied GRAMA request when he never submitted a GRAMA request to Respondents in the first place. In short, Tracy is not entitled to relief under the facts alleged in his petition because the alleged denial of the GRAMA request was made by the District, not Respondents. If Tracy had alleged that he had submitted a GRAMA request to Respondents, or if he had sued the District instead of Respondents, the situation may be different.<sup>3</sup> But here, where Tracy's GRAMA request was directed only to the District, but his petition for review is addressed only to Respondents, his petition states no claim upon which relief may be granted.<sup>4</sup>

Accordingly, we AFFIRM the district court's order granting the Respondents' motion to dismiss.

Dated this 14th day of September, 2021.

FOR THE COURT:

  
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Ryan M. Harris, Judge

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3. We do not mean to suggest that it would have been proper to serve a GRAMA request on Respondents. Although the parties spent much of their briefing energy on whether GRAMA applies to nongovernmental entities and individuals, it is not necessary for us to reach that issue to resolve this appeal.

4. Respondents attempt to characterize the problem with Tracy's petition as one grounded in subject-matter jurisdiction. But that is an inapt characterization. Utah district courts—which are courts of general jurisdiction—of course have subject-matter jurisdiction to consider petitions for judicial review regarding potential GRAMA violations. *See* Utah Code Ann. § 63G-2-404 (LexisNexis 2019). The fact that Tracy may not have sued the right parties, or that he otherwise does not meet the statutory requirements for a GRAMA claim, does not implicate the court's subject-matter jurisdiction; rather, it simply means that Tracy's claim lacks merit. *See, e.g., Zion Village Resort LLC v. Pro Curb U.S.A. LLC*, 2020 UT App 167, ¶¶ 51–55, 480 P.3d 1055.

**Addendum C. Order of Summary Affirmance [Groundwater Mining Lawsuit] of  
the Utah Court of Appeals**

**January 24, 2022**

FILED  
UTAH APPELLATE COURTS

JAN 24 2022

IN THE UTAH COURT OF APPEALS

MARK CHRISTOPHER TRACY, Appellant, v. SIMPLIFI CO, JENNIFER HAWKES, AND ERIC HAWKES, Appellees.	ORDER OF SUMMARY AFFIRMANCE  Case No. 20210227-CA
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Before Judges Christiansen Forster, Mortensen, and Hagen.

This matter is before the court on its own motion for summary disposition based on the lack of a substantial issue for review warranting further proceedings by this court. Specifically, this court's decision in *Tracy v. Simplifi*, Case No. 20200705, involves the same procedural posture and is dispositive of this appeal.

This appeal arises from the district court's dismissal of Tracy's petition for judicial review of an alleged denial of a records request under Utah's Government Records Access and Management Act (GRAMA). Tracy requested records from the Emigration Improvement District (EID), a governmental entity. In his petition for review, however, Tracy did not name EID as a party and instead identified Simplifi Company, Eric Hawkes, and Jennifer Hawkes as Respondents. The district court granted dismissal because it determined EID was a necessary party and that the named respondents were not the appropriate parties. The district court also awarded attorney fees to Respondents under Utah Code section 78B-5-825, listing several factors that demonstrated Tracy lacked good faith in pursuing the matter.

The current case suffers the same defect as in Case No. 20200705. As this court stated

Tracy apparently attempted to seek judicial review of the [EID's] alleged denial of a GRAMA request he made to and served upon the [EID] on July 2, 2020. But Tracy did not name [EID] as a party to this action. Instead, he filed his action against Respondents, none of whom—at least according to the allegations set forth in the petition—were ever named in a GRAMA request. Tracy has no grounds to bring an action against Respondents for judicial review of a denied GRAMA request when he never submitted a GRAMA request to Respondents in the first place. In short, Tracy is not entitled to relief under the facts alleged in his petition because the alleged denial of the GRAMA request was made by [EID], not Respondents.

Here, too, Tracy failed to name EID in the petition for review and is not entitled to relief under the facts alleged in his petition. Tracy attempts to raise other issues in his response to this court's motion, but those issues cannot be reached given the posture of the case as a dismissal for failure to name the correct entity as a party.

Tracy also attempts to challenge the award of attorney fees pursuant to Utah Code § 78B-5-825(1). He states the issue as whether "compliance with Rule 4(b) Utah R. Civ. P. constitutes "harassment" and "bad faith" under Utah Code Ann. § 78B-5-825(1) permitting an award of attorney fees and costs against the requestor of government records." Rule 4(b) governs the time to serve a complaint and summons. Timely serving a complaint and summons may not, on its own, constitute bad faith under the statute. However, the district court identified several factors that demonstrated a lack of good faith, including the pursuit of the current action after having notice that it was defective. Accordingly, this issue does not warrant further proceedings by this court.

IT IS HEREBY ORDERED that the district court's order is affirmed.

Dated this 24th day of January, 2022.

FOR THE COURT:

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Michele M. Christiansen Forster, Judge

## **Addendum D. Controlling Provisions**

### Amendment XIV, Section 1, United State Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### Utah Rules of Appellate Procedure.

Rule 10. Procedures for summary disposition or simplified appeal process.

(a) Time for filing; grounds for motion for summary disposition.

(a)(2) After a docketing statement has been filed, the court, on its own motion, and on such notice as it directs, may dismiss an appeal or petition for review if the court lacks jurisdiction; or may summarily affirm the judgment or order that is the subject of review, if it plainly appears that no substantial question is presented; or may summarily reverse in cases of manifest error.