

JUL 16 2020

IN THE UTAH COURT OF APPEALS

<p>EMIGRATION CANYON HOME OWNERS ASSOCIATION, Appellant, <i>v.</i> KENT L. JONES AND EMIGRATION IMPROVEMENT DISTRICT, Appellees.</p>	<p>ORDER</p> <p>Case No. 20200295-CA</p>
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Before Judges Mortensen, Pohlman, and Harris.

This case is before the court on Appellee Emigration Improvement District's (EID) Motion to Dismiss for Unauthorized Practice of Law. In the alternative, EID requests an order requiring Emigration Canyon Home Owners Association (ECHO) to be represented by legal counsel licensed in the State of Utah.

ECHO was a party in the district court, so it can appeal the standing ruling. Accordingly, we deny the motion to dismiss the appeal based upon alleged unauthorized practice of law but must consider whether ECHO must be represented by licensed legal counsel or can proceed as a pro se appellant through Mark Christopher Tracy. ECHO was represented by licensed attorneys in the district court, so the district court was not presented with the issue that is now before this court.

In *Graham v. Davis County Solid Waste Management*, 1999 UT App 136, ¶ 13, 979 P.2d 363, this court held that rule 17(d) of the Utah Rules of Civil Procedure allowed an unincorporated association to sue, but the association was required "to register as an association conducting business in Utah under an assumed name." Furthermore, the Davis County Clean Air Committee's filing of the original complaint in that case through one of its members "also violated the well-established rule that an unincorporated association, like a corporate entity, may not be represented by a nonlawyer." *Id.* ¶ 14. This court held that the Committee could have cured the deficiencies in the complaint by filing under the Assumed Name Statute and by entering an appearance of counsel on its behalf. *Id.* ¶ 15. Because it did neither, this court dismissed the appeal.

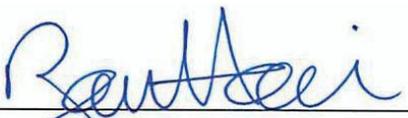
Utah Code section 42-2-5(2) requires “[A] person who carries on, conducts, or transacts business in this state under an assumed name, whether that business is carried on, conducted, or transacted as an individual, association, partnership, corporation or otherwise” to file the required certification with the Division of Corporations and Commercial Code. Tracy filed such a certificate, which initially contained a misspelling. The district court’s ruling on standing accepted that “Emigration Canyon Homeowners Association” is a DBA for Mark Christopher Tracy. The first requirement identified in *Graham* is satisfied. However, the present record is not sufficient to allow this court to make a factual determination whether *Graham* would require ECHO to obtain legal counsel because it is an “unincorporated association,” or whether ECHO being a DBA for Tracy allows him to proceed as an appellant pro se. The language of *Graham* is conjunctive throughout, demonstrating that compliance with the Assumed Name Statute is one requirement and obtaining legal counsel for an unincorporated association is a separate and additional requirement. *See id.* ¶ 14 (stating that the filing of the original complaint by Graham on behalf of the Committee “violated the well-established rule that an unincorporated association, like a corporate entity,” may not be represented by a nonlawyer.”).

IT IS HEREBY ORDERED that the motion to dismiss the appeal based upon the authorized practice of law is denied.

IT IS FURTHER ORDERED that this case is temporarily remanded to the district court for the limited purpose of making the factual findings necessary to determine whether the Emigration Canyon Home Owners Association is an unincorporated association that must be represented by legal counsel licensed in Utah in this appeal. The district court may hold such proceedings as that court deems necessary to make the factual determination.

Dated this 16 day of July, 2020.

FOR THE COURT:



Ryan M. Harris, Judge

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2020, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

Emigration Canyon Home Owners Association
m.tracy@echo-association.com

JEREMY R. COOK
jcook@ck.law

NORMAN K. JOHNSON
JULIE I. VALDES
normanjohnson@agutah.gov
jvaldez@agutah.gov

THIRD DISTRICT, SALT LAKE
Attn: Julie Rigby and Cheryl Aiono
cheryla@utcourts.gov; julier@utcourts.gov

By: *M. Kelaidis*
Marina Kelaidis
Judicial Assistant

Case No. 20200295
THIRD DISTRICT, SALT LAKE, 190901675