
In the Utah Court of Appeals

EMIGRATION IMPROVEMENT
DISTRICT, a Utah Special Service Water
District

Petitioner / Appellee,

v.

UTAH STATE RECORDS COMMITTEE,
and MARK CHRISTOPHER TRACY d/b/a
Emigration Canyon Home Owners
Association

Respondents / Appellants.

PUBLIC

No. 20220525-CA

Reply Brief of Appellant

Appeal from Summary Judgement Vacating the Order of Utah State Records Committee
to Produce Government Documents Germane to Pending Federal Litigation Against a
Utah Attorney-at-Law and a For-Profit Utah Corporation and Its Sole Shareholders as
the Designated Public Records Office of a Government Entity Entered in the
Third Judicial District, Salt Lake County Division,
the Honorable Laura Scott

No. 210905044

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Oral Argument Requested

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ADDENDUM

Email Correspondence of Utah Attorney Jeremy Rand Cook, dated February 24, 2021 [R124].

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d/b/a Emigration Canyon Home Owners
Association

Respondents / Appellants.

PUBLIC

No. 20220525-CA

Reply Brief of Appellant

Pro se Appellant and federal whistleblower Mark Christopher Tracy (“Mr. Tracy”) hereby submits the following Reply to the Appellee’s Brief filed by Utah Attorney Jeremy Rand Cook, (“Utah Attorney Cook”) on the behalf of Emigration Improvement District (“EID” and “EID Response Brief”) seeking this Court’s affirmation of the vacated Order of the Utah State Records Committee requiring the Utah Special Service District to disclose government records germane to pending federal litigation against Utah Attorney Cook, the Simplifi Company and its sole shareholders Eric and Jennifer Hawkes (“Simplifi” and “Mrs. and Mr. Hawkes”) as the designated EID Public Records Office. ^{1, 2}

¹ See *Tracy v. Simplifi et al.*, No. 22- 4032 (10th Cir., Reply Brief, July 21, 2022).

² Utah Attorney Cook continues to falsely maintain to this Court that Mrs. Hawkes “has no direct involvement with EID” despite Mrs. Hawkes having received payment of **\$754,782.10** of public funds through Simplifi administered by her husband Mr. Hawkes as the “EID Financial Manager” in six (6) fiscal years between 2015 to 2021 as

ARGUMENT

EID through Utah Attorney Cook purports that the “shall comply” mandate of the Utah Governmental Records and Management Act (“GRAMA”) under Utah Code Ann. § 63G-2-403(15)(a) for failing to file timely *Notice of Intent to Appeal* is merely a “courtesy” to the Utah State Records Committee (“SRC”) and may be freely disregarded as such.³ Next, Mr. Tracy as the Respondent and Real Party in Interest waived service of the complaint and court summons by entering “general appearance” and “arguing the merits of the case.”⁴ Moreover, service of EID’s *Motion for Summary Judgement* and corresponding certificate of service required by Utah R. Civ. P. 5(a)(1)(E) and (d) is superfluous if the opposing legal counsel is registered with the court’s online electronic filing system.⁵ Lastly, the district court did not abuse its discretion by failing to order mandatory joinder of a necessary party pursuant to Utah R. Civ. P. 19(a) due to a purported judgement of Utah State Third District Court Judge Mark Kouris “prohibiting” Mr. Tracy from recording the designated EID Public Records Office on the GRAMA request form published by the Utah State Ombudsman under the rubric “[g]overnment agency or office” consistent with the ruling of this Court [R128].^{6,7}

documented by the website administered by the Utah State Auditor at <https://transparent.utah.gov/vendet.php> [R122]. *See EID Response Brief* at page 1; *see also* Email Correspondence of Utah Attorney Cook, dated February 10, 2021, attached as Addendum A [R124].

³ *EID Response Brief* at page 3.

⁴ *Id.* at pages 5-6.

⁵ *Id.* at page 6.

⁶ *Id.* at page 8.

⁷ To date, Judge Kouris has prevented appellate review of the Amended Judgment [R036-041] by refusing to docket filings submitted to the district court clerk. *See Tracy v. Hon.*

These arguments merit little discussion.

I. Shall Provisions of GRAMA Enacted by the Utah State Legislature May Not Be Freely Disregarded by a Utah Special Service Water District or the Designated Public Records Office

Utah Attorney Cook argues that EID may disregard a “shall” provision of the Utah State Code Ann. § 63G-2-403(15)(a) because the Utah State Records Committee is granted discretion to impose sanctions against a governmental entity (and/or the designated public records office) under subsection (d) for non-compliance.

It is a general rule of statutory construction that the court examines the plain language of the statute. *State v. Larsen*, 865 P.2d 1355, 57 (Utah 1993). Moreover, when interpreting a statute, it is axiomatic that the court’s primary goal “is to give effect to the legislature’s intent in light of the purpose that the statute was meant to achieve.” *Biddle v. Washington Terrace City*, 993 P.2d 875, 879 (Utah 1999).

As the Utah Supreme Court noted, “[i]t is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute.... No clause[,] sentence or word shall be construed as superfluous, void or insignificant if the construction can be found which will give force to and preserve all the words of the statute.” *State v. Maestas*, 2002 Utah 123 at ¶53 (quoting Norman J. Singer, 2A Sutherland Statutory Construction § 46:06 (4th ed.1984)).

In the instant case, Utah State Code Ann. § 63G-2-403(15) provides,

Kouris, No. 20210743 (Utah Ct. App. 2021); *see also Tracy v. Simplifi et al.*, Utah 3rd Dist., No. 200905074 (Motion to Reinstate Period for Filing Direct Appeal in a Civil Case, April 5, 2022).

(a) Unless a notice of intent to appeal is filed [...] each party to the proceeding shall comply with the order of the State Records Committee.

[...]

(d)(i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the State Records Committee may do either or both of the following:

- (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or
- (B) send written notice of the governmental entity's noncompliance to the governor.

In the present case, there is no conflict between the two GRAMA provisions and thus no need for statutory interpretation of the plain and unambiguous language of the statute.

While discretion is afforded the Utah State Records Committee to impose sanctions in the event of non-compliance, the mandate “shall comply” serves as an additional jurisdictional requirement should a governmental entity (or the designated public records office) seek de novo judicial review if it intends to disregard a lawful and binding order to produce governmental records and thus thwart a constitutionally protected right in the State of Utah to access public records during normal business hours.⁸

The interpretation advanced by EID through Utah Attorney Cook that subsection (a) is merely “a courtesy” due to the discretion allowed to the Utah State Records

⁸ Utah Code Ann. § 63G-2-102(1)(a).

Committee by subsection (d) would render the former null and void and therefore cannot be accepted.

Failure to file *Notice of Intent to Appeal* is a jurisdictional bar to de novo judicial review by the district court under GRAMA.

II. Respondent Did Not Waive Service of the Summons and Complaint by Entering General Appearance or Arguing the Merits of the Case

Contrary factual representations advanced by Utah Attorney Cook to this Court without reference to the record, Mr. Tracy did not enter *Notice of General Appearance* in the present case and filed no Answer to the petition for de novo judicial review.⁹

It must however be conceded that if a Defendant specially asks the court for affirmative relief, he thereby submits himself to that court's jurisdiction. *See e.g., Downey State Bank v. Major-Blakeney Corporation*, 545 P.2d 507, 510 (Utah 1976).

Conversely, it is uncontested that a Motion for Dismiss under Utah R. Civ. P. 12(b)(1) and (6) is not an argument on the merits of a case, but merely contests the sufficiency of the complaint and the jurisdictional facts purported therein. *See Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995); *see also Bernheim v. Litt*, 79 F.3d 318, 321 (2d Cir. 1996) (citation omitted).

In the present case, Mr. Tracy requested only dismissal of the action, and presented arguments that the district court lacked jurisdiction to review a lawful and binding order of

⁹ Utah Attorney Cook appears to purport that service of process and court summons is not required for de novo judicial review of informal administrative proceedings by the Utah State Records Committee but offers this Court no statute or court ruling in support of this position. *EID Response Brief* at ft. 5.

the Utah State Records Committee based upon procedural requirements set forth by the Utah State Code, mandatory rules of Utah Rules of Civil Procedure, the express ruling of this Court, and lack of a temporary and/or permanent injunction prohibiting Mr. Tracy from submitting a request to view public records in the sole custody of Simplifi through Mrs. and Mr. Hawkes as the designated EID public records office as confirmed by Utah Attorney Cook himself [Addendum].

III. A Motion for Summary Judgment Must be Served on Opposing Counsel and Documented in a Certificate of Service Filed with the District Court

Utah Attorney Cook offers this Court no statutory or legal basis that a service of a dispositive motion on a necessary party to the proceedings and certificate of service filed with the district court is superfluous if the opposing party is registered to receive filings via the court automated electronic filing system, nor does it appear that any such authority exists in any jurisdiction of the United States of America.

IV. The Order of the Utah State Records Committee is Valid and Binding Absent a Temporary or Permanent Injunction Issued by the District Court

This Court previously ruled that a request for Government records must “be directed” to Simplifi, Mrs. and Mr. Hawkes as the designated EID public records office in order to preserve a right to petition the Utah district court for de novo judicial review.¹⁰

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¹⁰ *Brief of Appellant* at Addendum C.

As such, the district court lacked jurisdiction to vacate an enforceable order of the Utah State Records Committee as a purported violation of an Amended Judgement issued by Judge Kouris during appellate proceedings without judicial notice and/or hearing.¹¹

CONCLUSION

The Court should vacate the decision of the district court with instructions to refer the case back to the SRC to determine if per diem monetary fine against EID, Simplifi, Mrs. and Mr. Hawkes for willful failure to comply with a binding and lawful order per Utah Code Ann. § 63G-2-404(6)(b) is appropriate.

Respectfully submitted this 27th day of March 2023.

**MARK CHRISTOPHER TRACY DBA
EMIGRATION CANYON HOME
OWNERS ASSOCIATION**

/s/ Mark Christopher Tracy _____
Mark Christopher Tracy
Pro se Appellant

¹¹ Even if Judge Kouris maintained jurisdiction to amended a judgment during appellate proceedings, the district court's judgement fails to meet the specific requirements of injunctive relief pursuant to Utah R. Civ. P 65(d).

CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(g)(1), I, Mark Christopher Tracy, certify that this brief contains **1,722 words**, excluding the table of contents, table of authorities, addendum, certificates of compliance and service.

In compliance with the typeface requirements of Utah R. App. P. 27(a), I also certify that this brief has been prepared in a proportionally spaced font using Microsoft Word v.16.69.1 in Time New Romans font, 13-point.

I also certify that this brief contains no non-public information in compliance with the non-public information requirements of Utah R. App. P. 21(h).

**MARK CHRISTOPHER TRACY DBA
EMIGRATION CANYON HOME
OWNERS ASSOCIATION**

/s/ Mark Christopher Tracy

Mark Christopher Tracy
Pro se Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of March 2023, a true and correct copy of the foregoing Reply Brief of Appellant was sent via electronic mail per Utah R. App. P. 26(b) and Utah Supreme Court Standing Rule No. 11 to the following counsel of record. Two (2) paper copies will be provided upon request.

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/s/ Mark Christopher Tracy
Mark Christopher Tracy

**Addendum A
to Appellant's Reply Brief**

**Emigration Improvement District v. Utah State Records Committee *et al.*
Trail Case No. 210905044**

**EMAIL CORRESPONDENCE
OF UTAH ATTORNEY JEREMY RAND COOK**

Dated February 24, 2021

From: Jeremy Cook <jcook@ck.law>
Date: February 24, 2021 at 2:40:28 PM PST
To: mark.tracy72@gmail.com, The ECHO-Association <m.tracy@echo-association.com>
Cc: "Eric Hawkes (eric@ecid.org)" <eric@ecid.org>
Subject: GRAMA Requests

Mr. Tracy,

As you are aware, on February 10, 2021, Judge Kouris awarded fees against you and in favor of EID's records office, Eric Hawkes, Simplifi Company and Jennifer Hawkes related to a previous GRAMA request that you submitted to EID. Judge Kouris found that the filing of a GRAMA appeal against Eric Hawkes, Jennifer Hawkes and Simplifi Company (all of which you have continued to include in your GRAMA request despite Judge Kouris' decision) lacked merit and was filed in bad faith.

In accordance with Utah Code Ann. 63G-2-203(8)(a), a governmental entity may require payment of past fees and future estimated fees before beginning to process a request if: (ii) the requester has not paid fees from previous requests. Based on your request, the fees owed to Eric Hawkes, Jennifer Hawkes and Simplifi Company are clearly past due and owing fees related to the attached GRAMA requests. Accordingly, EID will not process to the attached GRAMA requests until the amount of \$5,758.50 is paid in full (see attached Judgment).

Thanks,
Jeremy

<image001.png>

<image002.png>

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