

MAY 04 2022

Salt Lake County

IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

By: _____
Deputy Clerk

<p>EMIGRATION IMPROVEMENT DISTRICT,</p> <p>Petitioner,</p> <p>vs.</p> <p>UTAH STATE RECORDS COMMITTEE, and MARK CHRISTOPHER TRACY d/b/a EMIGRATION CANYON HOME OWNERS ASSOCIATION,</p> <p>Respondents.</p>	<p>RULING AND ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT</p> <p>Case No. 210905044</p> <p>May 4, 2022</p> <p>Judge Laura S. Scott</p>
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Before the Court is Petitioner Emigration Improvement District's (EID) Motion for Summary Judgment (Motion). Although Respondent Mark Christopher Tracy d/b/a Emigration Canyon Home Owners Association (Mr. Tracy) requested a hearing, the Court declines to hold one because the issue has been authoritatively decided. *See* Utah R. Civ. P. 7(h).

EID'S PETITION FOR JUDICIAL REVIEW

On September 20, 2021, EID filed the Petition for Judicial Review of Decision and Order of State Records Committee (Petition), which seeks to "set aside the [State Records Committee's] Decision and find that EID was not required to provide documents in response to the GRAMA request because [Mr. Tracy] violated the decision and order of Judge Kouris." Alternatively, EID asks the Court to find that Mr. Tracy "is required to pay the judgment due and owing for his pervious frivolous and vexatious GRAMA request appeals prior to EID responding [to] the GRAMA request at issue in this matter."

The SRC's Decision and Order was issued on August 23, 2021. It relates to Mr. Tracy's request for records pursuant to the Government Records Access and Management Act (GRAMA). According to the Decision and Order, the "question before the Committee is whether attorney fees awarded in a district court case to two private individuals and a company can be the basis for not processing a request for records pursuant to Utah Code § 63G-2-203(8)(a)(ii)." The SCR determined "that the attorney fees that Mr. Tracy has been ordered to pay by Judge Kouris, are not fees 'from previous requests' to be paid to [EID]" and, consequently, Mr. Tracy's failure to pay those fees is not a basis "to deny Mr. Tracy access to public records."

On November 1, 2021, Mr. Tracy filed a Motion to Dismiss. After a hearing on February 4, 2022, the Court granted the Motion to Dismiss as to EID's argument that Mr. Tracy was required to pay the attorney fees awarded by Judge Kouris before it was required to respond to the GRAMA request but denied it as to EID's argument that its refusal to respond to the GRAMA request was proper based on the previous decisions of Judge Kouris and Judge Faust. *See Order entered February 17, 2022.*

UNDISPUTED MATERIAL FACTS FOR MOTION FOR SUMMARY JUDGMENT

1. After a hearing on February 10, 2021 in Case No. 200905074 (Kouris Case), Judge Mark S. Kouris issued an oral ruling, which was reflected in a Memorandum Decision and Order entered on February 24, 2021 (First Kouris Order).

2. After the oral ruling on February 10th but before the First Kouris Order was entered on February 24, 2021, Mr. Tracy emailed a Revised GRAMA Request – Fire Flow Test Results (GRAMA Request) to Eric Hawkes on February 11, 2021,. He copied Jennifer Hawkes on the email. The email states as follows:

Dear Emigration Improvement District Certified Records Officer
Eric Hawkes of the Simplifi Company,

Pursuant to the decision of the Utah State Records Committee this morning, I hereby resubmit the following request for governmental documents regarding the fire-flow test results of water system 18143 operated by the Simplifi Company.

We thank-you for your assistance in this matter.

3. The email attached a GRAMA Request Form. It identifies the government agency or office as “Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company.”

4. EID denied the GRAMA Request on the ground that Mr. Tracy had not paid fees from a prior request – *i.e.*, the attorney fees awarded in the First Kouris Order – and “EID will not process the [GRAMA Request] until the amount of \$5,758.50 is paid in full (see attached Judgment).”

5. Mr. Tracy appealed and the SRC ruled that Mr. Tracy’s failure to pay those fees was not a basis for denying the GRAMA Request. *See* SRC Decision and Order dated August 23, 2021.

6. On April 7, 2021, prior to the issuance of the SRC Decision and Order, a hearing was held in the Kouris Case on Mr. Tracy’s Motion to Vacate Memorandum Decision and Judgment (Motion to Vacate). In the Motion to Vacate, Mr. Tracy references the GRAMA Request and EID’s denial of the GRAMA Request

7. On April 15, 2021, Judge Kouris issued a Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure (Second Kouris Order) on April 15, 2021.

8. Relevant to the Motion for Summary Judgment, the Second Kouris Order states as follows:

On February 11, 2021 (the day after this Court's decision), Mr. Tracy submitted a new GRAMA request to EID in which he again cc'd Jennifer Hawkes and again stated that the governmental entity was "Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company." (the 'New GRAMA Request'). In response to the New GRAMA Request, EID's attorney sent Mr. Tracy an email informing Mr. Tracy that based on his continued inclusion of Simplifi Company and Mrs. Hawkes in the New GRAMA Request, the fees awarded by this Court would need to be paid prior to a response to the New GRAMA Request (the 'Response Email')

Mr. Tracy was informed at least six times by this Court, Judge Faust, the State Records Committee or EID's attorney that GRAMA requests should be made only to the public entity, Emigration Improvement District. *At the hearing, Mr. Tracy was not able to provide any plausible explanation for disregarding the decision of this Court and continuing to include Simplifi Company or Mrs. Hawkes in the New GRAMA Request, which leads this Court to conclude that Mr. Tracy's reason for continuing to include Simplifi Company and Mrs. Hawkes was to continue to harass Respondents.* Simply put, Mr. Tracy could have easily avoided any issues by following the decision and order of this Court, but inexplicably chose to disregard the Court's decision and continue to harass Respondents by including them in GRAMA requests that Mr. Tracy knew should be served only on EID. The Court has previously found that an award of attorney fees is proper pursuant to Utah Code Ann. § 78B-5-825(1), and the Court finds that Respondents should be awarded their reasonable attorneys' fees responding to the Motion.

The Court finds that Mr. Tracy has violated Rule 83(a)(1)(B) and 83(a)(1)(C). With respect to Rule 83(a)(1)(B), Mr. Tracy served and prosecuted this action after Judge Faust previously issued a decision on the same issue of law. See Case No. 200905123. After this Court issued its decision, *Mr. Tracy ignored both decisions, again served GRAMA request to EID that were served c/o Simplifi Company and included Mrs. Hawkes, and then Mr. Tracy attempted to utilize EID's response to again argue to this Court that filing an action against on Respondents, and not EID, was proper.* With respect to 83(a)(1)(C), the Court has previously found that the Petition in this action including redundant and immaterial allegations that appear to relate to other claims and issues that Mr. Tracy has against EID, and that the Petition was frivolous and filed for the purpose of harassment. The Court also finds that the Motion was unmeritorious.

(emphasis added).

9. The GRAMA Request in this case is the “New GRAMA Request” referenced in the Second Kouris Order.

RULING AND ORDER

The Court grants EID’s Motion for Summary Judgment because Judge Kouris has already determined the GRAMA Request violates the First Kouris Order and, consequently, EID is not required to respond to it. And the Court declines to overrule the Second Kouris Order. *See In Calsert v. Estate of Flores*, 2020 UT App 102, ¶ 16 (“[a] district judge presiding over one case ordinarily does not possess authority to declare invalid an order entered by another district judge in another case.”); *Mascaro v. Davis*, 741 P.2d 938, 946 (Utah 1987) (“One district judge cannot overrule another district court judge of equal authority.”); *Richardson v. Grand Central Corp.*, 572 P.2d 395, 397 (Utah 1977) (“Ordinarily one judge of the same court cannot properly overrule the decision of another judge of that court.”)).

Indeed, given that Judge Kouris “has made a specific factual determination applicable to the parties in that case” – that the GRAMA Request violates the First Kouris Order because it improperly includes Simplifi and the Hawkes – the Court “possesses no authority to second-guess [his] determination.” Rather, the Second Kouris Order must be taken as it is found and the “authority to reverse, vacate, or otherwise invalidate [the Second Kouris Order] rests with appellate courts, not with [this Court]. *See Calsert* at ¶ 16. Indeed, if Mr. Tracy believes that Judge Kouris incorrectly ruled that Simplifi and the Hawkes should not be included in any GRAMA request to EID and/or that EID does not have to respond to any GRAMA request that includes them, then Mr. Tracy’s avenue for redress is to appeal the First Kouris Order and/or the Second Kouris Order and/or any of Judge Kouris’ other rulings.

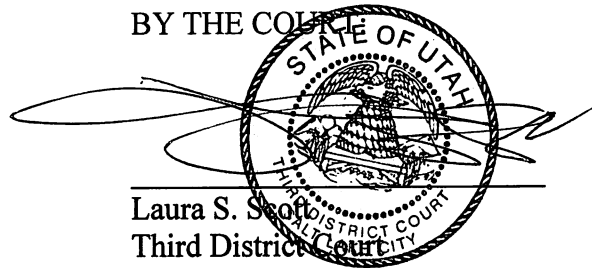
Accordingly, EID is entitled to judgment as a matter of law that it is not required to respond to the GRAMA Request because Judge Kouris has already decided that it violates the First Kouris Order.

CONCLUSION

For these reasons, the Court GRANTS the Motion for Summary Judgment. SO ORDERED.

Dated this 4th day of May, 2022.

BY THE COURT



Laura S. Scott
Third District Court

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 210905044 by the method and on the date specified.

EMAIL: JEREMY COOK JCOOK@CK.LAW

EMAIL: PAUL TONKS PHTONKS@AGUTAH.GOV

EMAIL: MARK CHRISTOPHER TRACY DBA EMIGRATION CANYON HO m.tracy@echo-association.com

05/04/2022

/s/ SYRIA PONTINI

Date: _____

Signature