

SEP 14 2021

IN THE UTAH COURT OF APPEALS

<p>MARK CHRISTOPHER TRACY, Appellant, <i>v.</i> SIMPLIFI COMPANY, JENNIFER HAWKES, AND ERIC HAWKES, Appellees.</p>	<p>ORDER Case No. 20200705-CA</p>
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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 We affirm the district court’s determination, and we do so in this unpublished order.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.¹

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 petition²—were ever named in a GRAMA request. Tracy has

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.³ 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.⁴

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

Dated this 14th day of September, 2021.

FOR THE COURT:



Ryan M. Harris, Judge

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.


CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2021, 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:

MARK CHRISTOPHER TRACY
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By 
Celia Urcino
Legal Secretary

Case No. 20200705
THIRD DISTRICT, SALT LAKE, 200905123