

IN THE UTAH COURT OF APPEALS

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Nasrulla Khan,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20070825-CA
v.)	
)	F I L E D
)	(January 17, 2008)
Ogden City Records Review)	
Board and Ogden City Police)	2008 UT App 19
Department,)	
)	
Defendants and Appellees.)	

Second District, Ogden Department, 060901285
The Honorable Michael D. Lyon

Attorneys: Nasrulla Khan, Ogden, Appellant Pro Se
Allan L. Larson and Heather S. White, Salt Lake City,
for Appellees

Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

Appellant Nasrulla Khan appeals a summary judgment granted on de novo review of the Ogden City Records Review Board's decision on his request under the Government Records Access and Management Act (GRAMA). See Utah Code Ann. § 63-2-701(a) (2004) (providing that appeals from the appeals boards of political subdivisions shall be by petition for judicial review to the district court). This case is before us on motions for summary disposition initiated by both Appellees and this court.

The question presented by this appeal is whether the district court erred in granting summary judgment on the petition for judicial review. We will affirm a trial court's grant of summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c). Where the motion is supported by facts in the record or by affidavit, an opposing party must provide in its response specific facts showing that there is a genuine issue for trial. See id. R. 56(e). We afford

a trial court's decision to grant summary judgment no deference and review it for correctness. See Norman v. Arnold, 2002 UT 81, ¶ 15, 57 P.3d 997.

The district court determined that no genuine issue of fact existed regarding whether Ogden City and its police department (collectively "Ogden") provided Khan with all documents in its possession responsive to his October 2005 request. Ogden supported the motion for summary judgment with its discovery responses and with affidavits from the police department's records custodian and the attorney who represented Ogden before the records review board. The discovery responses and affidavits attested that Ogden had provided to Khan every document in its possession that was responsive to the October 2005 request. In responding to a GRAMA request, a governmental entity "is not required to . . . create a record." Utah Code Ann. § 63-2-201(8)(a) (Supp. 2007). Although he was given ample opportunity to do so, Khan was unable to produce any evidence to rebut Ogden's claims. The district court did not err by concluding that there were no genuine issues of material fact and therefore granting summary judgment. The district court also correctly ruled that the audiotape of a January 2006 hearing and Ogden's records retention policies were not within the scope of the October 2005 request.

Khan argues that Ogden did not provide affidavits until it filed a reply to his opposition to the summary judgment motion. Therefore, he claims he was denied an opportunity to respond to the affidavits. The affidavits addressed Khan's claims that Ogden was withholding additional documents, which he raised in his opposition. Khan was afforded ample opportunity at the hearing on the summary judgment motion to produce any evidence that would rebut the statements in the affidavits. However, he simply disputed the truth of the statements without providing any specific facts. Khan persists in claiming that Ogden admitted in its discovery responses that it possessed additional documents, but refused to produce them. Khan's misunderstanding of the language of the response was fully addressed at the hearing on the summary judgment motion, and the claim is without merit.

Khan challenges the district court's inclusion of language in its order precluding him from filing GRAMA requests of the same nature with Ogden. The order addressed the effect of a ruling on the petition for judicial review and was intended to discourage filing of successive GRAMA requests making the same claims regarding the same subject matter. The order also stated that violation of the court's order would make Khan "subject to contempt, including possible fines and jail time." This is merely a statement of the possible result if a litigant is found to be in contempt of a court's order after appropriate notice and

an opportunity to respond in a contempt proceeding. Although it was not necessary to the disposition of the petition for judicial review, the district court did not err in including the additional language in its order. Similarly, to the extent that the district court made reference to proceedings before the federal courts or Ogden's claims of harassment by Khan, consideration of those collateral matters was not necessary to resolution of the summary judgment motion. However, Ogden raised those matters to support its request for an order that would have restricted Khan from future filings in district court without prior court approval. The district court did not grant that request. Any additional claims raised in this appeal have been reviewed and are found to be without merit.

We affirm.

Pamela T. Greenwood,
Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge