Agenda

Utah Supreme Court Advisory Committee
Utah Rules of Appellate Procedure

Nathalie Skibine, Chair
Stanford Purser, Vice Chair

Location:	Meeting held through Webex and in person at: Matheson Courthouse, Council Room, N. 301 450 S. State St. Salt Lake City, Utah 84111 https://utcourts.webex.com/utcourts/j.php?MTID=m752c96e536dc1dce6e37f0a2105eb1e0
Date:	November 5, 2026
Time:	12:00 to 1:30 p.m.

Action: Welcome and approval of October 1, 2026 Minutes	Tab 1	Nathalie Skibine, Chair
Action: Rule 23D	Tab 2	Nathalie Skibine
Action: Rule 23B	Tab 3	Mary Westby
Action: Rule 40A	Tab 4	Mary Westby
Discussion: Rule 38	Tab 5	Judge Christiansen Forster
Action: Rule 8 Subcommittee	Tab 6	Caroline Olsen, Dick Baldwin
Discussion: Old/new Business		Nathalie Skibine, Chair

Committee Webpage: https://legacy.utcourts.gov/utc/appellate-procedure/

2026/2027 Meeting schedule:

December 3, 2026	March 4, 2027	June 3, 2027	September 2, 2027
January 7, 2027	April 1, 2027	July 1, 2027	October 7, 2027
February 4, 2027	May 6, 2027	August 5, 2027	November 4, 2027

TAB 1

Minutes

Supreme Court's Advisory Committee on the Utah Rules of Appellate Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

In Person and by WebEx Videoconference
Thursday, October 1, 2026
12:00 pm to 1:30 pm

PRESENT

Rachel Phillips Ainscough
Dick Baldwin
Daniel Day
Judge Michele Christiansen Forster
Nicole Gray
Amber Griffith—Staff
Michael Judd—Recording Secretary
Debra Nelson
Caroline Olsen
Judge Gregory Orme
Martha Pierce
Stan Purser—Vice Chair
Clark Sabey
Nathalie Skibine—Chair
Nick Stiles—Staff
Mary Westby

EXCUSED

Michelle Quist

GUEST

Wendy Brown
Paige Nelson

1. Action: Nathalie Skibine, Chair

Approval of September 2026 Minutes

The committee reviewed the September 2026 minutes and proposed no changes.

Mary Westby moved to approve the minutes as displayed on screen. Debra Nelson seconded the motion, and it passed without objection by unanimous consent.

2. Action: Nathalie Skibine

Final Approval of Rules 1, 19, 27, and 48

The committee received a public comment suggesting that Rule 27 require the incarceration-status notation on the defendant's brief rather than the principal brief. Daniel Day explained that the State may not know the defendant's status. The committee agreed and revised Rule 27 accordingly.

Rachel Phillips Ainscough separately asked whether the rules governing Anders briefs should clarify respondents' filing obligations. She reported orders stating that respondents had not filed a response. Mary Westby observed that the language may be a typographical error because respondents typically file nothing in that circumstance. Ms. Ainscough will send Ms. Westby examples.

Judge Gregory Orme moved to approve Rules 1, 19, 27, and 48, as modified, and submit them to the Supreme Court for final approval. The motion carried.

3. Action: Nick Stiles

URE 107 / URAP 11

Nick Stiles reported that, after the Utah Rules of Evidence Committee submitted proposed Rule 107 to the Supreme Court, the Court asked that committee to coordinate with other advisory rules committees to determine whether related amendments were needed because of Rule 107's cross-references.

Nathalie Skibine asked whether Rule 11 is broad enough to include illustrative aids in the record on appeal. Clark Sabey noted that if an illustrative aid is filed in the district court, the appellate court may request it as part of the record. Ms. Ainscough added that her office has sometimes obtained the item from another party and then moved to supplement the record. Ms. Westby stated that Rule 11 is sufficiently broad if the submitted items are identified as exhibits.

4. Action: Caroline Olsen
Rule 8

Caroline Olsen presented proposed amendments adding separate page and word limits for Rule 8 motions, responses, and replies. The proposed limits mirror those allowed for summary-judgment motions: 9,000 words or 25 pages for a motion or response and 4,500 words or 12 pages for a reply. Ms. Westby questioned whether the limits were too high. Mr. Sabey noted that a party may need the additional space when a Rule 8 motion addresses the merits, and Ms. Olsen observed that the limits would reduce the need for overlength motions.

Ms. Westby moved to approve the proposed amendments to Rule 8 for submission to the Supreme Court with a recommendation that they be posted for public comment. The motion carried. The rule will be held until the committee approves Rule 23B.

Ms. Olsen then asked whether a subcommittee should review the overall structure of Rule 8. Committee members noted that changes to Rule 62 of the Utah Rules of Civil Procedure may have made Rule 8 more difficult to follow. The committee tabled that broader issue for further discussion.

5. Action: All
Rule 23

The committee reviewed proposed amendments adding a limit of 15 pages or 5,400 words for motions and memoranda in opposition and requiring a certificate of compliance when a filer uses the word-count limit.

Ms. Westby moved to approve the proposed amendments to Rule 23 for submission to the Supreme Court with a recommendation that they be posted for public comment. The motion carried. The rule will be held until the committee approves Rule 23B.

6. Action: Mary Westby
Rule 23B

Wendy Brown attended as a guest to address proposed amendments adding word limits to Rule 23B motions, responses, and replies. Ms. Brown expressed concern that a word limit could undermine the purpose of Rule 23B and require appellate counsel to abbreviate arguments. She suggested that, if the committee adopted a limit, it should be the same as the limit for an opening brief. Judge Orme noted that counsel may move for leave to file an overlength brief.

Ms. Westby observed that Rule 55A excludes attachments from its word count and recommended adding the same exclusion to Rule 23B. The committee also changed the phrase 'must not' exceed the word limit to 'may not,' consistent with the committee's style guide.

The committee tabled Rule 23B to allow Ms. Westby to add language excluding attachments from the word count.

7. Action: Nathalie Skibine
Rule 23D (Appellate Disqualification)

Nathalie Skibine asked whether committee members had any proposed edits to Rule 23D before it was resubmitted to the Supreme Court with a recommendation that it be posted for public comment. No additional edits were proposed.

8. Discussion: Nathalie Skibine, Chair
Old / New Business

None.

9. Adjourn Nathalie Skibine, Chair

Following the business and discussions described above, the committee adjourned. The committee's next meeting will take place on November 5, 2026.

TAB 2

Rule 23D.

(a) **Motion to Disqualify.**

(1) **Requirements.**

(A) Any party to an appeal may file a motion to disqualify a justice or a judge for bias, prejudice, or a conflict of interest.

(B) The motion must be accompanied by a certificate that the motion is filed in good faith and must be supported by an ~~affidavit or~~ unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act stating facts sufficient to show bias, prejudice, or conflict of interest.

(2) **Time for filing.**

(A) **Supreme Court.** The motion must be filed within 14 days after the later of the following:

(i) notice of oral argument;

(ii) the date on which the moving party knew or should have known of the grounds upon which the motion is based; or

(iii) if the last event occurs fewer than 14 days before oral argument, ~~if scheduled,~~ the motion must be filed as soon as practicable but not later than two days~~48~~ hours before oral argument.

(B) **Court of Appeals.** The motion must be filed after the docketing statement has been filed but is ripe (anticipated? expected? contemplated?) before the assigned panel is made public. The motion must be filed~~but~~ no~~t~~ later than 14 days after the last of the following:

(i) notice of appearance;

(ii) the date on which the moving party knew or should have known of the grounds upon which the motion is based; or

Commented [NS1]: Other suggestions were to include a comment about this (Justice Pohlman preferred changing the text) or to use language like "disqualify a judge from assignment to the panel" above.

Commented [JP2]: How does a party learn which judges are on its panel if no OA is set? Should we tie it to that rather than the attorney's appearance?

(iii) if the last event occurs fewer than 14 days before oral argument, ~~if scheduled,~~ the motion must be filed as soon as practicable but not later than two days~~48 hours~~ before oral argument.

(3) **Attorney's or party's signature.** Signing the motion or ~~affidavit or~~ declaration constitutes a certificate under Rule 40 and subjects the ~~party or~~ attorney or party to the procedures and sanctions of Rule 40.

Commented [JP3]: I'm never a fan of including something like this where it's superfluous. But I know we have something like this in Rule 63.

(4) **Subsequent motion.** No party may file more than one motion to disqualify in an action, unless the second or subsequent motion is based on grounds that the party did not know of and could not have known of at the time of the earlier motion.

(5) **Timeliness of motion.** If timeliness of the motion is determined under paragraph (a)(2)(A)(ii), paragraph (a)(2)(B)(ii), or paragraph (a)(4) the ~~affidavit or~~ declaration supporting the motion must state when and how the party came to know of the reason for disqualification.

(b) **Resolution of ~~M~~motion.**

(1) **Supreme Court.**

(A) If the justice who is the subject of the motion does not voluntarily recuse from the case, the motion will be submitted to the law and motion panel. The justice who is the subject of the motion will take no further action in the case until the motion is decided.

(i) If the justice who is the subject of the motion is a member of the law and motion panel, another member of the court, not assigned to the law and motion panel, will be invited to sit ad hoc. The law and motion panel may either deny the motion or refer the motion to the full court for review.

(ii) The full court will consist of all members of the court who are not the subject(s) of the motion. If less than a majority of ~~three~~ the members of the court are available, an active judge from the appellate or district court will be called to participate for the limited purpose of resolving the motion.

(B) If the reviewing justices find that the motion and ~~affidavit or~~ declaration are timely filed, filed in good faith, and legally sufficient, then a substitute justice will be assigned to the case consistent with the rules and practices of the Utah Supreme Court.

(C) In determining issues of fact or of law, the reviewing justices may consider any part of the record and may request of the subject justice a~~n affidavit or~~ declaration responding to questions posed by the reviewing justices.

(2) **Court of Appeals.**

(A) If the judge who is the subject of the motion does not voluntarily recuse from the case, the judge will refer the motion to the presiding judge or, if the presiding judge is the subject of the motion, to the associate presiding judge for review. If neither the presiding judge nor the associate presiding judge are available, any other judge of the court of appeals may serve as the reviewing judge. The judge who is the subject of the motion will take no further action in the case until the motion is decided.

(B) If the reviewing judge finds that the motion and ~~affidavit or~~ declaration are timely filed, filed in good faith, and legally sufficient, then another Court of Appeals judge will be assigned to the case consistent with the rules and practices of the Court of Appeals.

(C) In determining issues of fact or of law, the reviewing judge may consider any part of the record and may request of the judge who is the subject of the motion a~~n affidavit or~~ declaration responding to questions posed by the reviewing judge.

TAB 3

Rule 23B. Motion to remand for findings necessary to determination of ineffective assistance of counsel claim.

(a) **Grounds for motion; time.** A party to an appeal in a criminal case may move the court to remand the case to the trial court for entry of findings of fact, necessary for the appellate court's determination of a claim of ineffective assistance of counsel. The motion will be available only upon a nonspeculative allegation of facts, not fully appearing in the record on appeal, which, if true, could support a determination that counsel was ineffective.

The motion must be filed before or at the time of the filing of the appellant's brief. Upon a showing of good cause, the court may permit a motion to be filed after the filing of the appellant's brief. After the appeal is taken under advisement, a remand pursuant to this rule is available only on the court's own motion and only if the claim has been raised and the motion would have been available to a party.

(b) **Content of motion.** The content of the motion must conform to the requirements of Rule 23. The motion may incorporate by reference the statement of the case from the principal brief. The motion must identify the ineffectiveness claims and specify the factual issues relevant to each such claim to be addressed on remand. The motion must be accompanied by affidavits or declarations alleging facts not fully appearing in the record on appeal that show the claimed deficient performance of the attorney. The affidavits or declarations must also allege facts that show the claimed prejudice suffered by the appellant as a result of the claimed deficient performance.

(c) **Orders of the court; response; reply.** If a motion under this rule is filed at the same time as appellant's principal brief, any response and reply must be filed within the time for the filing of the parties' respective briefs on the merits, unless otherwise specified by the court. If a motion is filed before appellant's brief, the court may elect to defer ruling on the motion or decide the motion prior to briefing.

(1) If the court defers the motion, the time for filing any response or reply will be the same as for a motion filed at the same time as appellant's brief, unless otherwise specified by the court.

(2) If the court elects to decide the motion prior to briefing, it will issue a notice that any response must be filed within 30 days of the notice or within such other time as the court may specify. Any reply in support of the motion must be filed within ten days after the response is served or within such other time as the court may specify.

(3) If the requirements of paragraphs (a) and (b) have been met, the court may order that the case be temporarily remanded to the trial court to enter findings of fact relevant to a claim of ineffective assistance of counsel. The remand order will identify the ineffectiveness claims and specify the factual issues relevant to each such claim to be addressed by the trial court. The order will also direct the trial court to complete the proceedings on remand within 90 days of issuance of the remand order, absent a finding by the trial court of good cause for a delay of reasonable length.

(4) If it appears to the appellate court that the appellant's attorney of record on the appeal faces a conflict of interest upon remand, the court will direct that counsel withdraw and that new counsel for the appellant be appointed or retained.

(d) **Effect on appeal.** If a motion is filed at the same time as appellant's brief, the briefing schedule will not be stayed unless ordered by the court. If a motion is filed before appellant's brief, the briefing schedule will be automatically stayed until the court issues notice of whether it will defer the motion or decide the motion before briefing.

(e) **Proceedings before the trial court.** Upon remand the trial court will promptly conduct hearings and take evidence as necessary to enter the findings of fact necessary to determine the claim of ineffective assistance of counsel. Any claims of ineffectiveness not identified in the remand order will not be considered by the trial court on remand, unless the trial court determines that the interests of justice or judicial efficiency require consideration of issues not specifically identified in the order. Evidentiary hearings will

be conducted without a jury and as soon as practicable after remand. The burden of proving a fact will be upon the proponent of the fact. The standard of proof will be a preponderance of the evidence. The trial court will enter written findings of fact concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result, in accordance with the remand order. Proceedings on remand must be completed within 90 days of entry of the remand order, unless the trial court finds good cause for a delay of reasonable length.

(f) **Preparation and transmittal of the record.** At the conclusion of all proceedings before the trial court, the trial court clerk will immediately prepare the record of the supplemental proceedings as required by these rules. If the record of the original proceedings before the trial court has been transmitted to the appellate court, the trial court clerk will immediately transmit the record of the supplemental proceedings upon preparation of the supplemental record. If the record of the original proceedings before the trial court has not been transmitted to the appellate court, the court clerk will transmit the record of the supplemental proceedings upon the preparation of the entire record.

(g) **Appellate court determination.** Errors claimed to have been made during the trial court proceedings conducted pursuant to this rule are reviewable under the same standards as the review of errors in other appeals. The findings of fact entered pursuant to this rule are reviewable under the same standards as the review of findings of fact in other appeals.

(h) **Page limitation.** Motions and responses may not exceed 14,000 words, excluding any affidavits, declarations, or proposed documentary evidence in support of the motion. Any reply in support of the motion may not exceed 7,000 words. The filer must include a certificate~~ion~~ of compliance that the document complies with the applicable word count. A party may file a motion for leave to file an overlength motion or response. A copy of the proposed motion or response must accompany the motion for overlength. The court may grant the motion to file an overlength motion or response only upon a showing of good cause.

Effective ~~May 1, 2026~~

Advisory Committee Note

"Declaration" refers to an unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.

Note adopted 2022

TAB 4

Rule 40A. Vexatious litigants.

(a) **Grounds.** The appellate court may find a person to be a "vexatious litigant" if:

(1) the person, with or without legal representation, including an attorney acting pro se, does any of the following on more than one occasion:

(A) files a frivolous brief, motion, petition, or other document;

(B) files a brief, motion, petition, or other document that contains redundant, immaterial, impertinent, or scandalous material;

(C) engages in tactics that are frivolous or done solely for the purpose of harassment or delay; or

(D) purports to represent or to use the procedures of a court other than a court of the United States, a court created by the Constitution of the United States or by Congress under the authority of the Constitution of the United States, a tribal court recognized by the United States, a court created by a state or territory of the United States, or a court created by a foreign nation recognized by the United States; or

(2) Any other court has previously determined the party to be a vexatious litigant in a related matter.

(b) **Vexatious litigant orders.** The court may, on its own motion or on the motion of any party, after notice and an opportunity to be heard, find the party to be a vexatious litigant and enter an order requiring a vexatious litigant to:

(1) furnish security to assure payment of the moving party's reasonable expenses, costs, and if authorized, attorney fees incurred in a pending action;

(2) obtain legal counsel before proceeding in a pending action;

(3) obtain legal counsel before filing any future appeal or petition;

(4) abide by a prefiling order requiring the vexatious litigant to obtain the court's permission before filing any briefs, motions, petitions, or other documents in a pending action;

(5) abide by a prefiling order requiring the vexatious litigant to obtain the court's permission before filing any future appeal or petition; or

(6) take any other action reasonably necessary to curb the vexatious litigant's abusive conduct.

(c) **Necessary findings and security.**

(1) Unless the court relies on another court's vexatious litigant determination, the court must find by clear and convincing evidence that the party is a vexatious litigant.

(2) The court will identify the amount of the security, if any, and the time within which it is to be furnished. If the security is not furnished as ordered, the court may dismiss the vexatious litigant's appeal or petition.

(d) **Orders in a pending action.**

(1) If a vexatious litigant is subject to ~~an~~a prefiling order requiring the court's permission to file any briefs, motions, petitions, or other documents in a pending action, the vexatious litigant must submit the proposed filing to the court clerk and must:

(A) demonstrate that the filing is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(B) include an oath, affirmation, or declaration under criminal penalty that the filing is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent, or scandalous matter.

(2) A prefiling order or an order requiring a litigant to have legal counsel in a pending action shall be effective until a final determination of the action unless otherwise ordered by the court.

(e) **Orders regarding future actions.**

(1) A vexatious litigant subject to a prefiling order restricting the filing of future appeals or petitions shall submit an application seeking an order before filing. A single judge or justice may decide the application.

(2) To obtain an order under paragraph (e)(1), the vexatious litigant's application must:

(a) demonstrate that the appeal or petition presents a substantial issue for review under existing law or presents an issue with a good faith argument for the extension, modification, or reversal of existing law;

(b) include an oath, affirmation, or declaration under criminal penalty that the proposed claim is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

(c) if the proposed filing is a petition, include a copy of the proposed petition.

(3) A prefiling order limiting the filing of future actions in an appellate court, or an order requiring a litigant to have legal counsel in a future action in an appellate court, is effective indefinitely unless the court orders a shorter period.

(4) After five years a person subject to a prefiling order or requirement for legal counsel in any future actions in an appellate court may file a petition to vacate the order. The petition to vacate the order will not be subject to the requirement to obtain permission for prefiling review. A single judge or justice may decide the petition to vacate the order.

(f) **Contempt sanctions.** Disobedience by a vexatious litigant of an order under this rule may be punished as contempt of court.

(~~f~~g) **Other authority.** This rule does not affect the authority of the court under other statutes and rules or the inherent authority of the court.

Effective ~~May 1, 2025~~

TAB 5

Memorandum

To:	Advisory Committee on Appellate Procedure
Date:	August 27, 2026
Subject:	Rule 38/*Nielsen v. Cronquist*, 2026 UT App 65
From:	Clark Sabey, Supreme Court Staff Attorney

The Supreme Court has requested the Advisory Committee on Appellate Procedure review ¶¶ 24-33 of the Court of Appeals opinion *Nielsen v. Cronquist*, 2026 UT App 65, 589 P.3d 1230. The opinion observed that there is a specific provision in Rule 25 of the Rules of Civil Procedure for preservation of claims when a property interest has been transferred while a case is pending. However, there is no corollary provision in Rule 38 of the Rules of Appellate Procedure.

The Court would like the Committee to review whether there may be a reason for treating claims on appeal differently or if the rule should be amended to provide for preservation of claims. If there is a reason for treating claims differently than the Committee may need to look at clarifying the rule to explicitly state so.

Enclosures:

- Tab A: *Nielsen v. Cronquist*, 2026 UT App 65, 589 P.3d 1230
- Tab B: URCP Rule 25
- Tab C: URAP Rule 38

Tab A

589 P.3d 1230
Court of Appeals of Utah.

Travis I. NIELSEN and
Brittni L. Nielsen, Appellants,
v.
Elam Terrell CRONQUIST,
Lyle Kim Cronquist Sr., and
Berniece W. Cronquist, Appellees.

No. 20240680-CA
|
Filed April 23, 2026

Synopsis

Background: Northern landowners brought action against owners of two adjacent southern parcels, seeking to quiet title to boundaries and asserting various tort claims. Southern landowners filed counterclaims for boundary by acquiescence as well as various tort claims, including conversion and nuisance. Following a bench trial, the First District Court, Logan Department, Angela F. Fonnesbeck and Lynn W. Davis, JJ., entered judgment for southern landowners and awarded attorney's fees. Northern landowners appealed, and southern landowners filed motion to dismiss based on mootness.

Holdings: The Court of Appeals, Harris, J., held that:

northern landowners' appeal as to title and boundary claims was rendered moot upon northern landowners' sale of their property to nonparty;

judgment on claim for conversion of sheet metal improperly failed to identify the "person entitled to" the sheet metal, and thus remand was required for more detailed findings and conclusions; and

court acted within its discretion when determining that southern landowners' requested amount of attorney's fees was reasonable.

Affirmed in part, vacated in part, and remanded; appeal dismissed in part; request for attorney's fees denied.

Opinion, 2025 WL 3730931, amended and superseded.

Procedural Posture(s): On Appeal; Motion to Dismiss; Motion for Attorney's Fees; Judgment; Motion for Rehearing.

First District Court, Logan Department, The Honorable Angela Fonnesbeck, The Honorable Lynn W. Davis, No. 210100168

Attorneys and Law Firms

Wayne K. Caldwell, Aubri O. Thomas, Wayman Stodart, and Arther P. Hart, Attorneys for Appellants

Samuel A. Goble, Erin E. Byington, and Jill L. Sanders, Attorneys for Appellees

Judge Ryan M. Harris authored this Amended Opinion, in which Judges Michele M. Christiansen Forster and David N. Mortensen concurred.

Amended Opinion[1]

1 This amended opinion replaces the opinion that was issued on December 26, 2025. In response to a petition for rehearing filed by the Nielsens, and after reviewing invited supplemental briefs associated with that petition, we have added paragraph 17 to our factual recitation, and we have revised Part I of this opinion. To that extent, we grant the petition for rehearing. But in all other respects, that petition is denied. Indeed, all other parts of our opinion, as well as our ultimate conclusions, stand unchanged.

HARRIS, Judge:

***1234** ¶1 Travis I. Nielsen and Brittni L. Nielsen (the Nielsens) lived on a parcel of land that shared a boundary with two other parcels owned by members of their extended family: ***1235** one parcel owned by Elam Terrell Cronquist (Terry) and another parcel owned by Lyle Kim Cronquist Sr. (Kim) and Berniece W. Cronquist (Berniece) (Terry, Kim, and Berniece are herein collectively referred to as "the Cronquists").[2] In 2021, a dispute between the Nielsens and the Cronquists ignited a lawsuit involving over a dozen claims and counterclaims, including claims for quiet title, boundary by acquiescence, conversion of personal property, interference with water rights, nuisance, trespass, and attorney fees. After a bench trial, the court ruled in favor

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of the Cronquists on all claims and awarded attorney fees on some of those claims.

2 Because several parties share the same last name, we follow our usual practice of referring to them by their first or preferred names, with no disrespect intended by the apparent informality.

¶2 The Nielsens appeal, asserting that the trial court's findings of fact and conclusions of law were erroneous in various respects. But during the pendency of this appeal, the Nielsens sold their parcel, an eventuality that renders moot all of the Nielsens' title- and boundary-related claims. As for the Nielsens' remaining appellate challenges, we affirm in part and reverse in part, and we remand this case to the trial court for further proceedings.

BACKGROUND[3]

3 "On appeal from a bench trial, we view and recite the evidence in the light most favorable to the trial court's findings; we present additional evidence only as necessary to understand the issues on appeal." *State v. Sparling*, 2024 UT App 59, n.1, 549 P.3d 86 (cleaned up), *cert. denied*, 554 P.3d 1096 (Utah 2024).

¶3 The three parcels of land central to this case were once a single parcel. The owners of this single parcel—Ollie and Wilda Cronquist—successfully applied to subdivide it in 1997. This subdivision resulted in the creation of multiple lots, including the three adjacent parcels relevant here: the Nielsens' parcel, Terry's parcel (situated southwest of the Nielsens' parcel), and Kim and Berniece's parcel (to the southeast). At the time of the subdivision in 1997, a survey was conducted and a plat map was recorded, outlining the boundaries of these three parcels.

¶4 Between Terry's parcel and Kim and Berniece's parcel lay an access road that stretched from the Nielsens' parcel southward, connecting to Smithfield Canyon Road. This access road was situated in a fifty-foot-wide corridor that belonged to the Nielsens' parcel in fee simple, without any restrictions, covenants, or easements recorded on the Nielsens' property deed. Sometime before the subdivision of parcels, a fence was installed along the west side of the access road, separating the road from Terry's parcel. On the east side of the access road, Kim and Berniece maintained a lawn, sprinklers, and a septic system from their house up to the access road and had done so since at least the subdivision in 1997.

¶5 Aside from the shared boundary lines, the Nielsens' parcel also shared water lines with Kim and Berniece's parcel. The Nielsens' parcel featured a retention pond, which was supplied with water from a source called "Swamp Springs," where "all parties enjoy[ed] established water rights." From this retention pond, two lines extended to Kim and Berniece's parcel, one providing water for irrigation and the other providing water to a horse trough inside their corral. The Nielsens' parcel also featured an above-ground electric water pump, which pulled culinary water from a nearby source called "Miles Spring" to the Nielsens' home. From the Nielsens' parcel, a water line extended to Kim and Berniece's parcel, providing culinary water to their home. This water line existed when the Nielsens purchased their parcel in 2018, and soon thereafter, Berniece began making payments to the Nielsens for the electricity required to pump the Miles Spring culinary water to Kim and Berniece's home.

¶6 Near the northern boundary of Terry's parcel (adjacent to the Nielsens' parcel), there is an open-sided shed that—all parties agree—was primarily located on the Nielsens' parcel according to the plat map. Terry's son, Destry Cronquist, provided sheet metal for the shed's roof, and he left some additional sheet metal next to the shed, located at least partially on the Nielsens' parcel. ***1236** At some point, Travis transported the spare sheet metal to another property and refused to return it to either Destry or Terry.

¶7 By January 2021, the Nielsens were considering selling their property. Around this time, disputes arose regarding the boundaries between the Nielsens' parcel and the other two parcels. Specifically, the Nielsens claimed that the fence on the west side of the access road (alongside Terry's parcel) encroached on their parcel, and that Kim and Berniece's maintenance of the lawn and septic system on the east side of the access road also encroached on their parcel. In addition to the location of the boundaries along the access road, the parties disputed the location of the southern boundary of the Nielsens' parcel—from the north end of the access road westward along Terry's parcel and eastward along Kim and Berniece's parcel.

¶8 Eventually, the Nielsens filed suit against the Cronquists, seeking to quiet title to their parcel's boundaries. After the suit was filed, Travis disconnected the water line to Kim and Berniece's horse trough, and as a result, their horses

went without water for four days. Travis also "intermittently" turned off the valve controlling the water connection to Kim and Berniece's irrigation line. The Nielsens also set up cameras around their property and recorded interactions between the parties.

¶9 The Cronquists answered the Nielsens' complaint and, in addition, filed counterclaims of their own. The counterclaims included causes of action for boundary by acquiescence as well as various tort claims, including a conversion claim for the sheet metal and nuisance claims alleging that the Nielsens interfered with Kim and Berniece's water rights in both Swamp Springs and Miles Spring. In their answer to the counterclaims, the Nielsens alleged that the right to use culinary water from Miles Spring was "granted only to [the Nielsens] through Smithfield City" and that Kim and Berniece had "been illegally diverting" water "to their own homes for their own use." The Nielsens then filed an amended complaint, which, among other things, added a claim for conversion against Kim and Berniece for "wrongfully install[ing] water lines" to obtain water from Miles Spring.

¶10 By stipulation of the parties, the matter was reassigned to a senior judge who presided over a five-day bench trial. After receiving evidence and hearing argument, the court issued written findings of fact and conclusions of law. As relevant to this appeal, the court ruled in favor of the Cronquists on their boundary-by-acquiescence claims.[4] As for Terry's conversion claim (for the sheet metal), the court found that Destry "testified that the metal belonged to him and he gave permission for its use on" Terry's shed. And the court found that Travis had taken the sheet metal. Yet the court ordered that "the metal be returned to Terry who was the intended beneficiary of the metal." No other findings were made as to the ownership of the spare sheet metal.

4 For the reasons discussed below in Part I, we need not relay the trial court's analysis on the boundary-related claims.

¶11 The court also ruled on the water claims. As for Kim and Berniece's claim of interference with a water right, the court concluded that Travis had "wrongfully interfered" with Kim and Berniece's Swamp Springs water by "cutting and pulling water lines to [Kim and Berniece's] horse trough and arbitrarily shutting off the water valve" to their irrigation. The court then rejected the Nielsens' conversion claim involving the Miles Spring water, finding that the claim was "without merit" and "improperly motivated." The court explained that the Nielsens "purchased [their parcel] subject to sharing a [one-inch] pipe from Miles Spring for culinary water" and that the Nielsens received payments for the electricity to pump the Miles Spring water to Kim and Berniece's parcel for more than three years. The court further observed that the Nielsens "offered no explanation why [Kim and Berniece] would suddenly have no right to their culinary water." Thus, the court concluded that the Nielsens' conversion claim was "unsupported by any reasonable belief," "contradicted by [the Nielsens'] own testimony and actions," and "improperly motivated to blame" ***1237** Kim and Berniece for the Nielsens' "participation in the Miles Spring water system."

¶12 With regard to these water claims, the Cronquists requested attorney fees. Specifically, they sought fees for the interference claim under a statute that entitles the "prevailing party in a civil action ... to collect reasonable costs and attorney fees, if that action is brought ... for injuries caused by a diversion of water in violation of an existing water right." *See* Utah Code § 73-2-28. And they sought fees for defending against the Nielsens' conversion of water claim under Utah's bad-faith litigation statute, which entitles the prevailing party to fees where a claim is found to be "without merit and not brought or asserted in good faith." *See id.* § 78B-5-825(1).

¶13 In support of their attorney fees claims, the Cronquists' counsel submitted an affidavit as well as time records of the attorneys' work on the case, all of which set forth the hours spent, the hourly rates, and descriptions of the tasks performed. For some of the time entries, the amount requested was one-third of the total amount billed for the task, while other entries were requested at 100%. In their motion for fees, the Cronquists explained that they sought 100% "of the billing entries that were only related to water" but only "33%" of entries "that were related to all of the claims for the case," and that the "33% calculation [was] based" in part on "the amount of fact preparation" attributable to the water claims "versus the rest of the claims in the case." After reviewing the motion, the court granted the request and specifically found that the Cronquists had "made reasonable efforts in calculating attorney[ ] fees relating to both" the interference with a water right claim and the conversion claim.

¶14 Later, the Nielsens appealed. A few days after the Nielsens filed their opening brief on appeal, the Cronquists filed a suggestion of mootness and motion to dismiss. In that motion, they asserted that all boundary-related claims had become moot because the Nielsens had sold their parcel to a third party during the pendency of the appeal and therefore

no longer had any legal interest in those specific claims. The Cronquists also pointed out that no effort had been made to substitute in the third-party purchaser of the Nielsens' parcel as a party to this appeal.

¶15 In response, the Nielsens acknowledged that they had sold the parcel, but they nevertheless opposed the motion to dismiss the appeal entirely. They first argued that "the property [was] not integral to all of the issues on appeal or the parties' claims," asserting specifically that they retained an interest in the conversion and nuisance claims, as well as the attorney fees issues. As for the boundary-related claims, the Nielsens argued that rule 38 of the Utah Rules of Appellate Procedure "allows for the substitution of parties when necessary but does not outright require it." The Nielsens thus posited that "until a court is presented [with] a motion for substitution and that motion is granted, the original party remains in that matter as the party in question," and they asserted that the third party's purchase of their parcel did "not automatically render the appeal moot or deprive the court of jurisdiction." The Nielsens further argued that the sale of their parcel "in no way rendered relief impossible," because the third-party purchaser had, "for those claims strictly tied to the land, become a true successor in interest as any relief that would have been afforded to [the Nielsens] [was] now properly afforded to [the third-party purchaser]."

¶16 We deferred our ruling on the suggestion of mootness "pending plenary consideration of the appeal," and the parties filed the remaining briefs according to the briefing schedule.

¶17 We issued our original opinion in December 2025. In that opinion, we concluded (among other things) that the Nielsens' title- and boundary-related claims had been rendered moot. After issuance of our original opinion, the Nielsens filed a petition for rehearing, asking us to reassess the mootness issue. At that juncture, and for the first time, they filed a motion to substitute, asking for leave to substitute the third-party purchaser into the case as the appellant. And they filed a motion asking us to reinstate the appeal on the title- and boundary-related claims.

***1238** ISSUES AND STANDARDS OF REVIEW

¶18 In this appeal, the Nielsens assert that the trial court committed various errors in its post-trial ruling. With respect to many of these alleged errors, the Cronquists have asserted mootness as grounds for dismissal of the appeal. If an issue is moot, we "lack judicial power to address" the merits of the argument. *In re M.S.*, 2023 UT App 74, ¶ 22, 533 P.3d 859. Because this mootness issue "arises for the first time here on review, our decision is not governed by any standard of review, and we decide the matter as a question of law in the first instance." *Grewal v. Junction Market Fairview, LC*, 2024 UT 20, ¶ 12, 554 P.3d 863 (cleaned up).

¶19 The Nielsens also challenge the trial court's findings and conclusions regarding the Cronquists' sheet-metal conversion counterclaim, asserting that the court erred in awarding relief to a non-party in the case by ordering the return of the spare sheet metal to Terry despite evidence that Destry was the owner. "We review the trial court's legal conclusions for correctness, granting them no particular deference," but "we review the trial court's findings of fact for clear error, reversing only where the finding is against the clear weight of the evidence, or if we otherwise reach a firm conviction that a mistake has been made." *Covey v. Covey*, 2003 UT App 380, ¶ 17, 80 P.3d 553 (cleaned up).

¶20 Finally, the Nielsens challenge the reasonableness of the attorney fees awarded to the Cronquists. "A court's decision regarding the reasonableness of an attorney fee award is reviewed deferentially, for patent error or clear abuse of discretion." *Zion Village Resort LLC v. Pro Curb U.S.A. LLC*, 2020 UT App 167, ¶ 22, 480 P.3d 1055 (cleaned up).

ANALYSIS

I. Mootness: The Title- and Boundary-Related Claims

¶21 At trial, this case centered on boundary disputes between the Nielsens and the Cronquists. But the Nielsens no longer own the property central to those particular disputes and therefore no longer have any legal interest in the location of that parcel's boundaries. Thus, any relief we could afford the Nielsens—the parties claiming error here—would have no effect. For these reasons, we agree with the Cronquists that the Nielsens' appellate claims—including any associated evidentiary challenges— related to their former parcel's boundaries are moot, and we therefore dismiss the Nielsens' appeal as to those issues.

¶22 We start with the premise that, as a general rule, lawsuits must be brought and maintained by the party with the interest in the matter at hand. This general rule is what motivates our jurisprudence regarding the concepts

of standing and mootness, and it is what motivates our procedural requirements about real parties in interest. *See* Utah R. Civ. P. 17(a).

¶23 "Standing is a jurisdictional requirement that must be satisfied before a court may entertain a controversy between two parties." *Laws v. Grayeyes*, 2021 UT 59, ¶ 27, 498 P.3d 410 (cleaned up). "Although the Utah Constitution—unlike the federal constitution—does not contain a 'case or controversy' requirement and therefore 'includes no express limitation' on Utah courts' jurisdiction, our supreme court has stated that the Utah Constitution 'nevertheless mandates certain standing requirements, which emanate from the principle of separation of powers.' " *Erda Cmty. Ass'n v. Grantsville City*, 2024 UT App 126, ¶ 21, 558 P.3d 91 (quoting *Laws*, 2021 UT 59, ¶ 33, 498 P.3d 410). "Our traditional standing requirements mimic those imposed by the United States Supreme Court's interpretation of the federal constitution." *Id.* ¶ 23 (cleaned up). And these requirements "subsist[ ] through all stages" of a case, including both the "trial and appellate" stages. *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998) (cleaned up). As a general matter, and in the absence of a rule or statute to the contrary, to satisfy standing requirements, "parties must continue to have a personal stake in the outcome of the lawsuit" at all stages of the lawsuit. *Id.* (cleaned up).

¶24 At the beginning of a case, in order to be deemed to have standing to sue, ***1239** plaintiffs must "allege that they have suffered or will suffer some distinct and palpable injury that gives them a personal stake in the outcome of the legal dispute." *Harman v. 105 Partners, LLC*, 2024 UT App 109, ¶ 40, 556 P.3d 669 (cleaned up). Standing principles dictate that "a party may generally assert only his or her own rights and cannot raise the claims of third parties who are not before the court." *Id.* (cleaned up). These same principles are reflected in rule 17(a) of the Utah Rules of Civil Procedure, which dictates that "[e]very action shall be prosecuted in the name of the real party in interest." The purpose of this requirement "is to allow defendants the right to have a cause of action prosecuted by the real party in interest in order for the judgment to preclude any action on the same demand by another." *Green v. Louder*, 2001 UT 62, ¶ 43, 29 P.3d 638 (cleaned up); *see also* 6A Wright & Miller's Federal Practice & Procedure § 1541 (3d ed. 2026 update) (stating that rule 17 of the Federal Rules of Civil Procedure, which contains a real-party-in-interest requirement similar to Utah's rule 17, "performs the useful function of protecting individuals from harassment and multiple suits by persons who would not be bound by the principles of claim preclusion if they were not prevented from bringing subsequent actions by a real-party-in-interest rule"). Thus, a lawsuit brought in the name of the wrong party is subject to dismissal on both rule-based real-party-in-interest grounds as well as jurisdiction-based standing grounds.

¶25 But once a lawsuit has been initiated by the correct party, our rules of civil procedure allow that party to continue to litigate the suit through trial even if—during the pendency of the proceedings in the trial court—that party transfers its interest in the lawsuit. The applicable rule states that, "[i]n case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." Utah R. Civ. P. 25(c). This rule "is designed to allow an action to continue unabated when an interest in a lawsuit changes hands, rather than requiring the initiation of an entirely new lawsuit." *ELCA Enters., Inc. v. SISCO Equip. Rental & Sales, Inc.*, 53 F.3d 186, 191 (8th Cir. 1995) (cleaned up) (applying rule 25(c) of the Federal Rules of Civil Procedure, which is substantively similar to Utah's rule). The rule "promote[s] order and help[s] avoid confusion," *see Trapnell & Assocs. v. Legacy Resorts, LLC*, 2020 UT 44, ¶ 44, 469 P.3d 989, and it encourages efficiency by allowing lawsuits that may be in their advanced stages to continue without the necessity of substitution (or even dismissal and re-filing) by the party who obtained the interest.

¶26 And a "transfer of interest," as envisioned by rule 25(c), includes not just transfers of the right to sue—the chose in action—but also transfers of the underlying contract or property interest that gave rise to the lawsuit in the first place. *See CCW Ranch, LLC v. Nielsen*, 2012 UT App 205, ¶ 3 n.1, 283 P.3d 1072 (noting that an "intrafamily sale" of the real property, during the pendency of the trial court proceedings, was the sort of transfer that implicates rule 25(c)); *see also Crown Point Partners LLC v. Crown Point Plan Comm'n*, 275 F.R.D. 279, 280-82 (N.D. Ind. 2011) (deeming a transfer of the real property at issue in the lawsuit to be the sort of transfer that implicates rule 25(c)).

¶27 Thus, had the Nielsens transferred the property during the pendency of the trial court proceedings, rule 25(c) would have applied, and—absent a court order, made upon motion, mandating a substitution of parties—they would have been able to continue prosecuting the lawsuit through trial, notwithstanding the fact that, after the transfer, they no longer had an interest in the property.

¶28 But the Nielsens didn't transfer the property during the pendency of the trial court proceedings; they transferred it after the case was final at the trial court level and after they had filed a notice of appeal in this court. And unfortunately for the Nielsens, rule 25(c) applies only to transfers of interest that occur during the pendency of trial court proceedings; it does not apply to transfers of interest that occur while a case is on appeal. *See, e.g.*, Fed. R. Civ. P. 25 advisory committee's ***1240** note to 1961 amendment ("As to substitution on appeal the rules of the appellate courts should be consulted."); 7C Wright & Miller's Federal Practice & Procedure § 1951 (3d ed. 2026 update) ("Rule 25 applies only to substitution in the district court. Substitution in an action pending in a court of appeals is governed by [the] Appellate Rule[s].").

¶29 On appeal, such matters are governed by our rules of appellate procedure; in this instance, the one that's applicable is rule 38. *See Trapnell*, 2020 UT 44, ¶ 70 & n.10, 469 P.3d 989 (applying rule 38 of the Utah Rules of Appellate Procedure in assessing an argument about a party's entitlement to substitution on appeal). That rule has four subsections, each of which discusses substitution of parties in appellate cases in various settings. *See* Utah R. App. P. 38 (subsection (a) covers the death of a party, subsection (b) covers incompetency, subsection (d) concerns public officers, and subsection (c)—a catch-all provision—governs "[s]ubstitution for other causes"). None of the four subsections expressly discusses transfers of interest; that is, there is no analogue, in our appellate rules, to civil rule 25(c). Indeed, the parties agree that, of the four subsections in appellate rule 38, subsection (c) is the only one that has potential application here.

¶30 That subsection states that "[i]f substitution of a party is appropriate for any other reason [than those specifically stated in the rule], the court may substitute the party upon good cause shown." *Id.* R. 38(c). We are unaware of any Utah caselaw interpreting this subsection. And federal cases are of no help here; unlike rules 17 and 25 of the Utah Rules of Civil Procedure, where federal rules and Utah rules are similarly worded, there is no analogue to this subsection in the federal appellate rules. *See* Fed. R. App. P. 43(b) ("Substitution for a Reason Other Than Death. If a party needs to be substituted for any reason other than death, the procedure prescribed in [the death of a party subsection] applies."); *see also Jenco, LC v. Valderra Land Holdings, LLC*, 2025 UT 20, ¶ 26, 572 P.3d 381 (explaining that "to the extent Utah's rules and the federal rules are similarly worded, we at times turn to the federal rules and cases interpreting them for guidance," but noting that "where Utah's rule is materially different from the analogous federal rule, federal caselaw offers limited guidance" (cleaned up)).

¶31 We also note that, while the other subsections of appellate rule 38 appear to be drawn, at least in significant part, from the text of civil rule 25, *compare* Utah R. App. P. 38(a) (regarding death of a party), *with* Utah R. Civ. P. 25(a) (regarding death of a party); *compare* Utah R. App. P. 38(b) (regarding incompetency), *with* Utah R. Civ. P. 25(b) (regarding incompetency), the drafters of the appellate rule opted *not* to include a subsection regarding transfer of interest. "We interpret court rules, like statutes and administrative rules, according to their plain language." *In re C.D.S.*, 2023 UT 11, ¶ 25, 531 P.3d 217 (cleaned up); *see also Ross v. Ross*, 2019 UT App 104, ¶ 10, 447 P.3d 104 ("Our procedures for interpreting statutes and rules are the same: We do so according to our general rules of statutory construction." (cleaned up)). "In examining statutory language, we consider the relevant statute in its entirety, construing each part or section in connection with every other part or section so as to produce a harmonious whole." *Vineyard Props. of Utah LLC v. RLS Constr. LLC*, 2021 UT App 144, ¶ 26, 505 P.3d 65 (cleaned up). Further, "we presume that the expression of one term should be interpreted as the exclusion of another, and we seek to give effect to omissions in statutory language by presuming all omissions to be purposeful." *State v. Stewart*, 2018 UT 24, ¶ 13, 438 P.3d 515 (cleaned up).

¶32 Applying these principles, we must view the differences between appellate rule 38(c) and civil rule 25(c) as intentional, and we must attempt to give those differences meaning. Rule 25(c) creates a rather unique circumstance: it changes ordinary rules regarding standing, mootness, and real parties in interest, and it provides that a party litigating a lawsuit may continue to do so even though it has transferred its interest in the matter in dispute. We consider rule 25(c) to constitute an exceptional departure from our usual standing requirements, and we are not willing to read that same exception into an appellate rule that—apparently by design—does ***1241** not include the same language supporting the existence of that exception.[5]

5 We do not know why the drafters of appellate rule 38 chose not to include a section about transfers of interest. But it doesn't take much imagination to think of potential reasons the drafters might have had for wanting to return,

> on appeal, to first principles of standing and mootness (rather than continue with civil rule 25(c)'s exceptional provision). By the time the case reaches the appellate stage, the trial proceedings are over, and new tools—including civil rule 62 and appellate rule 8—are available to appellants who wish to maintain the trial-level status quo during the pendency of an appeal. *See* Utah R. Civ. P. 62 (stay of proceedings to enforce a judgment or order); Utah R. App. P. 8 (stay or injunction pending appeal). As always, if we have misperceived the drafters' intent in choosing the language of appellate rule 38, those drafters are of course free to amend the rule to incorporate principles from civil rule 25(c).

¶33 And without an exception similar to the one extant in civil rule 25(c), ordinary standing and mootness principles apply. After all, these doctrines are "closely linked: ripeness and mootness easily could be seen as the time dimensions of standing." *McInnis-Misenor v. Maine Med. Center*, 319 F.3d 63, 69 (1st Cir. 2003) (cleaned up); *see also WildEarth Guardians v. Public Service Co. of Colo.*, 690 F.3d 1174, 1182 (10th Cir. 2012) ("Mootness usually results when a plaintiff has standing at the beginning of a case, but, due to intervening events, loses one of the elements of standing during litigation; thus, courts have sometimes described mootness as 'the doctrine of standing set in a time frame.' " (quoting *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397, 100 S.Ct. 1202, 63 L.Ed.2d 479 (1980)); *accord Mathews v. Tooele County*, 2025 UT 30, ¶ 20, 573 P.3d 1276.

¶34 A case becomes moot if, "at any point" during the life of the case, "a change in circumstances eliminates the legal controversy between the parties." *Mathews*, 2025 UT 30, ¶ 20, 573 P.3d 1276. Mootness inquiries often turn on whether "the relief requested [has been] rendered impossible or of no legal effect." *Transportation All. Bank v. International Confections Co.*, 2017 UT 55, ¶ 15, 423 P.3d 1171 (cleaned up). "Because the mootness doctrine largely turns on the continuing availability of the relief requested, Utah's mootness cases have commonly looked to the precise terms of the plaintiff's pleadings (whether it be the complaint or some other filing) to determine the nature of the requested relief." *Harman v. 105 Partners, LLC*, 2024 UT App 109, ¶ 26, 556 P.3d 669 (cleaned up).

¶35 Ordinarily, it is possible for an issue to become moot during the pendency of an appeal; this occurs when "during the pendency of the appeal circumstances change so that the controversy is eliminated, thereby rendering the relief requested impossible or of no legal effect." *In re adoption of L.O.*, 2012 UT 23, ¶ 8, 282 P.3d 977 (cleaned up); *see also* 1A C.J.S. *Actions* § 76 (2026) ("If events that occur subsequent to the filing of a lawsuit or appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed." (cleaned up)). As applicable here, it is possible for an appeal to be mooted when the real property at issue in the underlying lawsuit gets sold during the appellate process.

¶36 For instance, our supreme court has on two occasions held that the sale of real property during an appeal rendered the case moot. *See Grewal v. Junction Market Fairview, LC*, 2024 UT 20, ¶ 29, 554 P.3d 863; *Richards v. Baum*, 914 P.2d 719, 722 (Utah 1996). In *Richards*, buyers sued to enforce their right to purchase real property, but after receiving an adverse judgment, the buyers did not obtain a stay of the judgment pending appeal. *See* 914 P.2d at 722. And when the property was sold to a third-party purchaser during the appeal, there was nothing the appellate court could do to afford relief to the buyers/appellants. *See id.* (explaining that "the sole relief the [appellants] sought at trial was specific performance of a real estate contract and a decree quieting title to the property," yet "[b]ecause of their failure to obtain a stay pending [the] appeal, the property was lawfully sold to another" and thus "[n]o action which [the court] could ... take would affect the litigants' rights to the property"). The court thus determined that the buyers' appeal had been rendered moot. *See id.* In *Grewal*, which featured a ***1242** similar fact pattern, the court held that *Richards* was "sufficiently analogous" to that case "to control the mootness question." 2024 UT 20, ¶ 29, 554 P.3d 863.

¶37 In this case, by contrast, the remedy itself still exists. That is, we could still assess the merits of the title and boundary claims, and our ruling could affect the rights of the third party who purchased the Nielsens' parcel. But that third party is not a party to this appeal, nor did that party attempt to substitute into this appeal at any point prior to the issuance of our original decision. Thus, in the absence of that real party in interest, the issue here is whether our decision on the title and boundary claims could provide relief to *the Nielsens,* specifically. Because we conclude that it couldn't, we must in turn conclude that the Nielsens' appeal as to those claims has been rendered moot.

¶38 Appellate courts in other jurisdictions have applied the mootness doctrine in situations like this one, where an appellant no longer has an interest in the real property anchoring their claims for relief. *See Ditto v. City of Chattanooga*, No. E2023-01185-COA-R3-CV, 2024 WL

4002560, at *1 (Tenn. Ct. App. Aug. 30, 2024); *Ahn v. Sanger*, No. 23-CV-02459, 2024 WL 1995807, at *1 (N.D. Cal. May 6, 2024) (reviewing a bankruptcy court ruling). In *Ditto*, an appellant's case was mooted when he sold the property at issue to a third-party purchaser while his appeal was pending. 2024 WL 4002560, at *1. There, a city sought to condemn and demolish the structures on the appellant's property, and the appellant was denied an injunction prohibiting the city from doing so. *See id.* However, on appeal, the court held that it was "undisputed" that the appellant "no longer ha[d] any legal interest" in the property that was the "subject of [the] litigation" because the appellant "concede[d] that he sold the [p]roperty to a third party after initiating" the appeal. *Id.* at *5. The court thus held that even if it reversed, the appellant was "no longer entitled to anything having to do with the [p]roperty" and, as a result, the court's "ruling would not affect him in the slightest." *Id.* The court held that the appellant's claims were therefore moot. *See id.*

¶39 Similarly, in *Ahn*, the claimant sought to have two liens encumbering the property at issue invalidated by a bankruptcy court. *See* 2024 WL 1995807, at *1. But by the time the case reached the reviewing court, the claimant no longer had any interest in the relevant property, and by agreement, there was no risk that a deficiency judgment could have been pursued against the claimant in personam. *See id.* Given this, the reviewing court explained that the claimant "lack[ed] a legally cognizable interest in whether" the liens "encumbering the property [were] void" and, therefore, the claimant's challenge was "constitutionally moot because it [was] impossible for the [c]ourt to grant [the claimant] effectual relief on her claims." *Id.*

¶40 In this case, the Nielsens' title- and boundary-related claims are moot because the Nielsens sold their parcel to a third party while this appeal was pending. As in *Ditto* and *Ahn*, the Nielsens no longer have any legal interest in the property central to this dispute. Without any such interest, the Nielsens no longer have any interest in the title- and boundary-related claims in this case, which all involve the now-sold property. Thus, any relief we could afford the Nielsens on these claims would have no legal effect for them. And the third-party purchaser—who the Nielsens concede has "become a true successor in interest" to any "claims strictly tied to the land"—is not a party to this appeal. No motion to substitute was filed before the issuance of our original opinion, and, therefore, the real party in interest for the Nielsens' title- and boundary-related claims was never a part of this case. Thus, all claims brought by the Nielsens relating to the title and boundaries of the property are moot, and we are therefore without judicial power to address the merits of those claims.

¶41 The Nielsens resist this conclusion with several arguments. First, they argue that they did not need to file a motion for substitution and that—pursuant to civil rule 25(c)—they were permitted to continue litigating this appeal in their own names even without a motion for substitution ever having been filed. We reject this argument because, as already discussed, civil rule 25(c) does not apply to appellate proceedings and because ***1243** appellate rule 38 does not contain civil rule 25(c)'s special provision allowing a party to continue pursuing a case in its own name after a transfer of interest.

¶42 Second, the Nielsens point to two motions—a motion to substitute and a motion seeking reinstatement of the appeal on the title and boundary claims, both filed *after* the issuance of our original opinion—that, if granted, would allow the new owner of the property to litigate the appeal in his own name. But the obvious problem is that these motions were filed after we issued our opinion ruling against the Nielsens on the mootness issues. With the issuance of that opinion, the appellate issues were decided and the appeal was effectively over. While appellate rule 38 does not set forth specific timelines for the filing of motions for substitution of parties, in our view a motion filed after the issuance of the final appellate opinion should usually be deemed untimely. And in our view, it was untimely here.

¶43 The Nielsens clearly knew about the sale of their property long before our original opinion issued. Indeed, the Cronquists filed a motion to dismiss this appeal, on mootness grounds, only four days after the Nielsens filed their appellate brief. The Nielsens filed an opposition to that motion to dismiss, but neither they nor the third-party purchaser—either in that opposition or anywhere else—sought permission for a substitution of parties. Indeed, in that opposition, the Nielsens maintained that substitution was not required. Waiting to file such a motion until *after* the issue is resolved against them in the original opinion is simply too late. On this basis, we deny the Nielsens' belated motion for substitution and their motion to reinstate the appeal.

¶44 Third, the Nielsens argue that the sale of the property did not render moot the other claims in the appeal, including the tort claims and requests for attorney fees. This point is well taken, and we address the remaining claims in Part II below.

But the viability of those remaining claims does not save the title- and boundary-related claims from becoming moot as to the Nielsens. *See Grewal*, 2024 UT 20, ¶ 31, 554 P.3d 863 (concluding that a dispute regarding attorney fees was not mooted by the sale of the relevant property even though the challenges related to the property itself were rendered moot); *see also Dominguez v. Dominguez*, 583 S.W.3d 365, 371 (Tex. App. 2019) (holding that the sale of property mooted the issues relating to the property but that "for the remaining issues, ... the rule against mootness [did] not apply").

¶45 Finally, the Nielsens argue that appellate rule 38 is permissive and does not require substitution of the parties. We agree that rule 38 is permissive, but we do not see how this function of the rule saves the title- and boundary-related claims from becoming moot on appeal if the real party in interest is not properly substituted. The third party here was certainly not required to substitute into this appeal, nor were the Nielsens required to substitute out. But without such substitution, we are being asked to adjudicate title and boundary claims without having the actual owner of the relevant property before us. Again, any relief we could afford the Nielsens on these claims would have no legal effect. At least in the context of this case, rule 38 and our mootness doctrine exist in harmony.

¶46 In sum, because the Nielsens sold their parcel and no longer have any legal interest in it, any relief we could provide them as to the title- and boundary-related claims would have no legal effect. Those claims are therefore moot as to the Nielsens.

II. The Remaining Claims

¶47 But the Nielsens' sale of their parcel to a third party did not moot any challenges regarding non-real-property claims. Those remain live, and the Nielsens may continue to press them. Indeed, they attempt to advance some such challenges in this appeal. But upon review of the Nielsens' briefing, it is frankly difficult to ascertain which parts of the court's findings and conclusions they are challenging. They assert that the trial court erred in various respects, and they even provide a chart of the alleged errors in the court's findings and conclusions. But they do not attempt to explain many of the alleged errors' relevance; they certainly make no systematic effort to tie the listed errors to ***1244** particular issues or claims. We have done our best to figure out which non-real-property claims are at issue in this appeal, but we note our supreme court's observation that "[a] party may not simply point toward a pile of sand and expect the court to build a castle." *Salt Lake City v. Kidd*, 2019 UT 4, ¶ 35, 435 P.3d 248.

¶48 After reviewing the briefs, we can discern adequately briefed challenges to the trial court's findings and conclusions regarding the Cronquists' sheet-metal conversion claim and to the court's attorney fees awards, and we address the merits of those challenges below. But we reject any other intended challenges as inadequately briefed or clearly without merit.[6] *See* Utah R. App. P. 24(a)(8) (stating that a party "must explain, with reasoned analysis supported by citations to legal authority and the record, why the party should prevail on appeal"); *see also Cottam v. IHC Health Services Inc.*, 2024 UT App 19, ¶ 15, 544 P.3d 1051 (stating that parties must "persuade a reviewing court through reasoned, supported argument that the [trial] court committed harmful, reversible error—a burden that necessarily requires the appellant to address the reasoning and basis of the [trial] court's ruling and to explain why that court got it wrong"—and that "when an appellant's brief fails to satisfy the minimal requirements of rule 24, we need not discuss the merits of the case" (cleaned up)).

6 In this case, the Nielsens have not adequately briefed several issues. For instance, they asserted claims for intentional and negligent infliction of emotional distress at trial and received an adverse judgment on these claims, and while they note these claims in their chart of errors, they do not provide any authorities or analysis on these particular claims or explain how the trial court erred in ruling against them on these claims. Likewise, the court found for the Cronquists on their nuisance claim regarding the cameras that the Nielsens had set up near the Cronquists' parcels, yet the Nielsens' brief is devoid of any analysis as to this particular nuisance claim. And the Nielsens' assertion that the trial court erred by denying their motion for a new trial is also inadequately briefed, given that the Nielsens merely assert generally that errors in the findings of fact and conclusions of law merit a new trial.

One other claim mentioned in the Nielsens' briefs—while not necessarily inadequately briefed—fails on its merits. The Nielsens assert that the trial court erred by denying their motion for partial summary judgment before trial. Part of their argument turned on the boundary-related claims discussed in Part I, which are now moot. But another part involved their conversion and nuisance claims. Specifically, the Nielsens argue that because the Cronquists did not deny allegations of conversion and nuisance in their

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> answer, those allegations should have been deemed admitted for purposes of trial and summary judgment granted accordingly. This argument fails, because in their answer, the Cronquists included the following: "To the extent that any allegations remain that have not been specifically addressed herein, [the Cronquists] deny any such allegations." And rule 8(b) of the Utah Rules of Civil Procedure permits a party to "deny all of the statements in a claim by general denial." The Nielsens do not address why we should not treat the Cronquists' denial as a general denial consistent with rule 8.

A. Conversion of Sheet Metal

¶49 The Nielsens challenge the trial court's ruling in favor of the Cronquists on their conversion claim regarding the sheet metal. Specifically, they argue that the court's conversion ruling adjudicated the rights of—and effectively awarded relief to—a non-party (Destry) over whom the trial court had no jurisdiction. On this point, we agree with the Nielsens.

¶50 "To prove conversion, a party must establish an act of willful interference with property, done without lawful justification, by which the person entitled to property is deprived of its use and possession, and that the party is entitled to immediate possession of the property at the time of the alleged conversion." *Rand v. KOA Campgrounds*, 2014 UT App 246, ¶ 11, 338 P.3d 222 (cleaned up).

¶51 In this case, the trial court's findings and conclusions do not identify the "person entitled to" the sheet metal. *See id.* (cleaned up). Terry's son, Destry, provided sheet metal for the shed's roofing and siding, and left some of it near the shed. And at some point, Travis took the remaining sheet metal, transported it to another property, and refused to return it to either Destry or Terry. The court found that Destry had "testified that the metal belonged to him and he gave permission for its use on" Terry's shed. ***1245** Yet the court ordered that "the metal be returned to Terry who was the intended beneficiary of the metal." No other findings were made as to the ownership of the spare sheet metal.

¶52 To the extent the court found that Destry was the person entitled to the sheet metal, the court effectively awarded relief to a non-party over whom it had no jurisdiction. *See Van Leeuwen v. BANA RESI-NON-CORE*, 2023 UT App 91, ¶ 31, 536 P.3d 84 (explaining that "the trial court had no jurisdiction to grant the non-party relief" when the "non-party failed to intervene and the requirement of intervention was not waived by the opposing party" (cleaned up)); *Fisher v. Fisher*, 2003 UT App 91, ¶ 19, 67 P.3d 1055 (holding that the trial court had no jurisdiction to enforce a lien filed by a non-party); *Ostler v. Buhler*, 1999 UT 99, ¶ 9, 989 P.2d 1073 (reversing the trial court's order awarding disbursement to a non-party for lack of jurisdiction); *Openshaw v. Openshaw*, 80 Utah 9, 12 P.2d 364, 365 (1932) (holding that a judgment "in favor of a person who is not a party to the action or proceeding is void because the court has no jurisdiction to make it"). That was reversible error. Destry was not a party to the action and should not have been afforded relief on the conversion claim.

¶53 To the extent that the trial court was attempting to find that the sheet metal actually belonged to *Terry*, the findings and conclusions do not adequately articulate this. *See Armed Forces Ins. Exch. v. Harrison*, 2003 UT 14, ¶ 28, 70 P.3d 35 (explaining that findings of fact "should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached" (cleaned up)). The trial court did not find that Terry was the owner of the sheet metal, but instead only ordered that the metal be returned to him because he was the "intended beneficiary" of the metal. But the court did not explain how Terry came to be the intended beneficiary of the metal—it made no factual findings on this point, and it did not discuss any legal theory under which such status might be obtained.

¶54 Accordingly, we vacate the court's order regarding the sheet metal, and we remand the matter for entry of more detailed findings and conclusions on this point. *See Monaco Apartment Homes v. Figueroa*, 2021 UT App 50, ¶ 6, 489 P.3d 1132 ("Where the inadequacy of the trial court's findings of fact and conclusions of law results in our inability to ascertain the basis of the trial court's decision, we are prevented from effectively reviewing [that] decision and may remand for the entry of more detailed findings." (cleaned up)).

B. Attorney Fees

¶55 Finally, the Nielsens challenge the trial court's award of attorney fees to the Cronquists on two different claims. But here, the Nielsens' challenge is limited: they assert simply that the trial court abused its discretion in making its determination as to what amount of fees was reasonable under the circumstances. We discern no reversible error in the court's award of attorney fees.

¶56 "The general rule in Utah is that, subject to certain exceptions, a party is entitled to attorney fees only if authorized by statute or by contract." *Meadowbrook, LLC v. Flower*, 959 P.2d 115, 117 (Utah 1998) (cleaned up). Two

statutes provided the basis for the award of fees here. First, the trial court awarded fees to the Cronquists for defending against a claim for conversion of the Miles Spring water under Utah's bad-faith litigation statute, which entitles the prevailing party in a civil action to recover attorney fees "if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith." *See* Utah Code § 78B-5-825(1). Second, on a different claim, the court awarded fees to the Cronquists under a statute that entitles the "prevailing party in a civil action ... to collect reasonable costs and attorney fees, if that action is brought ... for injuries caused by a diversion of water in violation of an existing water right." *See id.* § 73-2-28(4).

¶57 Notably, in their briefing, the Nielsens do not appear to challenge the court's conclusion that the Cronquists are *entitled* to attorney fees under these statutes. ***1246** [7] Rather, they argue only that the amount of awarded fees was not reasonable. And as already noted, our standard of review on this issue is deferential. *See Zion Village Resort LLC v. Pro Curb U.S.A. LLC*, 2020 UT App 167, ¶ 22, 480 P.3d 1055 (stating that "a court's decision regarding the reasonableness of an attorney fee award is reviewed deferentially, for patent error or clear abuse of discretion" (cleaned up)).

7 To the extent the Nielsens attempted to mount a challenge to the Cronquists' entitlement to attorney fees under those two statutes, such a challenge is inadequately briefed. For example, the Nielsens attempt to "incorporate[ ] ... by reference" their list of the trial court's alleged errors to argue that the attorney fees award was in error. For reasons already discussed, *see supra* ¶ 47, this argument does not help us determine whether the court erred on the merits of its fees award. For example, nothing in the Nielsens' chart of errors touches on the trial court's determination that the conversion of water claim proceeded with an *improper purpose* or that it was *meritless* under the bad faith statute. The Nielsens merely assert that because there were numerous errors in the findings and conclusions, it necessarily follows that the fees award was in error. We reject that argument because it lacks the analysis necessary for adequate briefing.

¶58 Here, we perceive no abuse of discretion in the trial court's assessment of what amount of fees would be reasonable. The Cronquists' trial counsel submitted time records of the attorneys' work on the case, as well as an affidavit in support. These records included the hours spent on the case, the hourly rates charged for those hours, and descriptions of the tasks performed. For some of the entries, the Cronquists asked the court to award the full amount, and for other entries, they asked the court to award only one-third of the billed amount. After reviewing the request and supporting documentation, the trial court found that the Cronquists had "made reasonable efforts in calculating attorney[ ] fees relating to both" the interference with a water right claim and the conversion claim regarding the Miles Spring water.

¶59 The Nielsens argue that the Cronquists applied an arbitrary one-third coefficient to some entries "based on some internal metric" to calculate the amount allocatable to the water-related claims. But the Cronquists explained in their motion where that one-third figure comes from: the "33% calculation [was] based" in part on "the amount of fact preparation" attributable to the water-related claims "versus the rest of the claims in the case." And after reviewing the time entries—including the one-third allocation for the general case entries—the trial court found that the Cronquists had "made reasonable efforts in calculating attorney[ ] fees relating to both" the interference with a water right claim and the conversion claim regarding the Miles Spring water. We cannot say that the district court exceeded its discretion in this regard, especially given that the water-related claims consumed a considerable amount of focus in this litigation, as evident in the findings and conclusions themselves.

¶60 The Nielsens also argue that at least some of the time entries appear "unrelated to [the] current action" and that these entries should not have been included in the request for fees in this case. Specifically, they argue that "many of the charges" appear to be "related to work on [the Cronquists'] case with Smithfield City." As an example, the Nielsens point to a time entry involving strategy for "water rights" and "water facility & water service agreement," which the Nielsens argue relates to another case involving water rights and Smithfield City. But the Nielsens do not provide any explanation as to how that case or that research would be irrelevant to the instant case. Indeed, some research regarding Smithfield City's water rights or any agreement the city may have had with the Nielsens (or their predecessors-in-interest) seems relevant given that the Nielsens expressly argued that the city prohibited them from sharing water with another residence—Kim and Berniece's parcel.

¶61 For these reasons, we conclude that the trial court acted within its discretion in making its reasonableness assessment, and we therefore affirm the court's attorney fees awards.[8]

8 The Cronquists request attorney fees for having to address a "frivolous appeal," presumably pursuant to rule

> 33 of the Utah Rules of Appellate Procedure. We decline to grant this request. Fees are to be awarded under this rule "only in egregious cases, lest there be an improper chilling of the right to appeal erroneous lower court decisions." *Marroquin v. Marroquin*, 2019 UT App 38, ¶ 36, 440 P.3d 757 (cleaned up). While we ultimately reject some of the Nielsens' arguments, we do not consider this an "egregious" appeal worthy of sanctions.

***1247** CONCLUSION

¶62 Because the Nielsens sold the property central to their title- and boundary-related claims during this appeal, their appeal as to those claims is moot, and we dismiss the appeal as it relates to those claims. As for the remaining claims, we vacate the trial court's order regarding the conversion of sheet metal claim, because it was unclear in the findings and conclusions whether the court was awarding relief to a non-party, and we remand this case to the trial court for further proceedings on that point. And finally, we conclude that the court did not abuse its discretion in making its reasonableness assessment regarding attorney fees, and we therefore affirm the court's attorney fees awards.

All Citations

589 P.3d 1230, 2026 UT App 65

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Tab B

Rule 25. Substitution of parties.

Rule printed on August 27, 2026 at 1:12 pm. Go to https://www.utcourts.gov/rules *for current rules.*

(a) Death.

(a)(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party. The moving party shall serve the motion and any notice of hearing on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than ninety days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(a)(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in Subdivision (a) of this rule may allow the action to be continued by or against his representative.

(c) Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in Subdivision (a) of this rule.

(d) Public officers; death or separation from office. When a public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within 6 months after the successor takes office, it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

Tab C

Rule 38. Substitution of parties.

Effective:
11/1/2009

Rule printed on August 27, 2026 at 1:50 pm. Go to https://www.utcourts.gov/rules *for current rules.*

(a) Death of a party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 21. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the trial court or agency but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in accordance with this paragraph. If a party entitled to appeal dies before filing a notice of appeal, the notice of appeal may be filed by the deceased party's personal representative or, if there is no personal representative, by the deceased party's attorney of record. After the notice of appeal is filed, substitution shall be effected in accordance with this paragraph.

(b) Incompetency. If a party becomes incompetent, the court may allow the action to be maintained by or against the party’s representative upon good cause shown.

(c) Substitution for other causes. If substitution of a party is appropriate for any other reason, the court may substitute the party upon good cause shown.

(d) Public officers; death or separation from office.

(d)(1) When a public officer is a party to an appeal or other proceeding in an official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(d)(2) When a public officer is a party to an appeal or other proceeding in an official capacity, the public officer may be described as a party by official title rather than by name; but the court may require the name to be added.

TAB 6

Rule 8. Stay or injunction pending appeal.

(a) **Stay or injunctive relief.**

(1) **Available relief.** A party may move the appellate court for the following relief pending appeal or pending disposition of a petition under Rule 5 or Rule 19:

(A) a stay of the judgment or order with or without security; or

(B) an order suspending, modifying, restoring, or granting injunctive relief.

(2) **Initial motion in trial court**. Before seeking relief in the appellate court under this rule, a party must first seek the requested relief in the trial court unless the party can show extraordinary circumstances or that the trial court has already rejected the basis for the requested relief.

(b) **Motion requirements.** Motions filed under this rule must include:

(1) the content required by Rule 23(a); and

(2) as applicable, the reason the trial court denied the requested relief, the reason the trial court denied the basis for the requested relief, or the extraordinary circumstances justifying seeking relief for the first time in the appellate court.

Commented [DB1]: A diagnosis of one reason why this rule is so confusing is that it never provides the legal standard that governs the decision to stay enforcement of a money judgment or enter a stay/injunction. Separating those out might help organize the rule and the varying security requirements more clearly.

Commented [DB2]: As long as we're revamping this rule, we should probably make sure we're making parallel modifications to URAP 17, so that appeals from agency proceedings are not treated differently. Or at least, we should make sure any differences are purposeful.

Commented [CO3]: In *Jenco v. Valderra Land Holdings, LLC*, the Supreme Court characterized an order to transfer property as injunctive and within rule 62(c). 2025 UT 20, ¶¶ 23-25. Given that ruling, we may want to consider whether this language still works with the monetary v. injunctive distinction in URCP 62(b)/62(c).

Commented [DB4]: I'm not sure this is that big of a deal, but the court in *Van Dusen* noted that the party had moved to "vacate" the injunction, but the word "vacate" isn't in the rule so it construed the motion as one to "suspend" the injunction. URCP 62(c) uses these verbs but also includes "dissolves," which isn't here. At a minimum, I'd add "dissolves." Maybe "vacate" too, but I think that's a close analog to "suspend" so I'm not sure that's necessary.

Commented [CO5]: It would be helpful for practitioners if this section provided guidance on what factors a movant should brief.

See Van Dusen v. Wasatch County, 2026 UT 1, 26:

"In addressing Petitioners' motion to us, both parties assume that our determination of whether to grant or modify injunctive relief under rule 8 is governed by the preliminary injunction standard outlined in rule 65A. But rule 8 does not say that. Instead, it directs us to consider those factors only when deciding whether to waive any bond requirement."

(c) **Security requirement.**

(1) Except as provided in paragraphs (c)(2) and (c)(3), the appellate court ordinarily will require the movant to give a bond or other appropriate security as a condition of the requested relief.

(2) In the case of a stay, the court may waive the requirement for a bond or other security if the movant demonstrates:

(A) a likelihood of prevailing on appeal;

(B) a likelihood of irreparable harm to the movant outweighing the harm to any other party; and

(C) the stay is not adverse to the public interest.

Commented [DB6]: This relates to the comments about the next subsection, but this rule should mirror the discretion in URCP 62 and allow the appellate court to set that bond, including for an amount other than the presumptive amount. And it should also provide the standard for doing so (URCP 62 says it should be an amount that would "adequately protect[] the adverse party against loss or damage occasioned by the stay and assures payment after the stay ends").

Commented [DB7R6]: As for the language in URCP 62, however, I don't think it's flawless. Whether it is "just" to grant a stay involves a consideration that is not otherwise reflected in the rules, which is that the inability to obtain a stay can create financial pressures that affect some litigants' ability to seek appellate review of a decision. That is just one consideration about what is "just," but it's the counterweight to questions about whether the adverse party is sufficiently protected and whether they'll be able to collect the judgment immediately if the judgment is affirmed on appeal. So I think the standard provided by the rules would be more accurate if it made that consideration express.

Commented [CO8]: We should also consider whether this language remains sufficiently clear in light of *Jenco*. Does this pertain only to a stay of a money judgment/order without security (62(b)), or is it also applicable to a "stay" of injunctive relief (62(c)).

Commented [DB9]: When compared to 8(c)(3), why are these two factors combined here? Is the "likelihood" that needs to be shown that there is irreparable harm? Or is it a likelihood that irreparable harm outweighs harm to the other party?

(3) In the case of an injunction, the court may waive the requirement for a bond or other security if the movant demonstrates:

(A) a substantial likelihood of prevailing on appeal;

(B) the movant will suffer irreparable harm without the injunction;

(C) the irreparable harm to the movant outweighs whatever harm the injunction may cause the party enjoined; and

(D) the injunction is not adverse to the public interest.

(d) **Response.** Any party may file a response to a motion within 14 days after the motion is served; however, the court may, for good cause shown, dispense with, shorten, or extend the time for responding to any motion.

(e) **Reply to Response**. The moving party may file a reply to answer new matters raised in the response. A reply, if any, may be filed no later than 5 days after the response is served, but the court may rule on the motion without awaiting a reply.

(~~d~~f) **Stay in criminal cases**. Stays pending appeal in criminal cases in which the defendant has been sentenced are governed by Utah Code section 77-20-302 and Rule 27 of the Utah Rules of Criminal Procedure. Stays in other criminal cases are governed by this rule.

(g) **Page Limitation.** Motions made under this rule may not exceed 9,000 words or 25 pages. Any response to a motion may not exceed 9,000 words or 25 pages. A reply to a response may not exceed 4,500 words or 12 pages. If a word count is used, the filer must include a certification that the document complies with the applicable word count.

Effective May 1, 2025

Commented [TW10]: The below factors are the rule 65A injunction factors that a party would have to brief regardless of whether they wanted the court to waive security

Commented [DB11R10]: URCP 62 doesn't require a bond for an injunction, instead URCP 62(c) describes a much more flexible approach, giving the court discretion to "suspend, modify, restore, or grant an injunction during the pendency of appellate proceedings upon such conditions for the security of the rights of the adverse party as are just." That makes more sense than waiving the requirement for a bond. A bond is monetary and may have no bearing on the nature of the injunction.

That problem is particularly clear in cases where the government obtains a stay. URCP 62(d) exempts the government from posting a "bond, obligation, or other security" to get a stay, but there's no similar exemption here. Instead, 8(c)(1) says that unless you satisfy (c)(2) or (c)(3), "the appellate court ordinarily will require the movant to give a bond or other appropriate security as a condition of the requested relief."

Commented [DB12]: I think Taylor's comment above alludes to this, but it's unclear to me why the 8(c)(2) and 8(c)(3) factors are phrased differently. Why a "substantial likelihood" of success for an injunction but just a "likelihood" for a stay? And why a "likelihood of irreparable harm" for a stay, but for an injunction the movant has to demonstrate they "will" suffer irreparable harm?

Commented [DB13]: This should be wordsmithedto more neutral language because the phrasing assumes this covers a circumstance where a party sought but did not get an injunction, but does not describe a movant who has been enjoined and asks the appellate court to stay that injunction.

Commented [DB14]: If we give a word-count option, do we need to exclude the usual portions from that count, like caption, signature block, certifications, etc.?

An additional comment from Taylor Webb:

This is more of a rule 62 problem now in light of *Jenco*, but the issue with treating any "non-monetary" judgment as injunctive, rather than applying this to URCP65A injunctions proper, is twofold.

One, stays of any non-monetary judgments are now discretionary whereas parties are entitled to stays of money judgments as a matter of right upon posting adequate security. But cases with non-monetary judgments are the ones most at risk of becoming moot on appeal—i.e., the cases you need a stay to preserve your appellate rights. If you don't stay a money judgment, it is enforceable but won't moot your appeal. And even absent a stay, you can also pay a money judgment while preserving your right to appeal.

Two, you're treating every non-monetary judgment as equivalent to a URCP65A injunction proper, which is nonsensical in some cases. For example, a breach of contract defendant subject to a money damages award can get a stay as a matter of right upon posting adequate security. But if that same defendant were subject to a specific performance order under the same contract, that stay request is now purely within the court's discretion. That discretion makes sense when you're asking the court to modify a 65A injunction ruling, because the analysis for the injunction and the analysis for the modification are the same, so it's effectively a motion to reconsider. But the analysis for whether a plaintiff is entitled to specific performance is completely distinct from a 65A analysis. That analysis is effectively the same as the breach of contract damages analysis,

but they're now treated like two different animals. And it is odd to have to brief a 65A analysis when seeking a stay of an ordinary judgment.

Divorce decrees are another example of where this distinction doesn't make sense. If Party A is ordered to pay Party B $500,000 to equalize the estate, that would be a money judgment that could be stayed as a matter of right upon posting adequate security. But if Party A is instead ordered to *transfer* Party B $500,000 from an account, that is arguably "injunctive" rather than a money judgment and a stay would be discretionary. If Party A is ordered to give Party B half the beanie babies, that's injunctive. But if Party A is ordered to pay Party B $X for half the value of the beanie babies, that's a money judgment. So the phrasing of the order then determines whether a party can get a stay as a matter of right or whether its discretionary, even though the same security would cover either scenario.

The other wrench in this is the new modification of URCP62(j)(2) for domestic proceedings. My understanding is that the intention of that provision was to allow parties in a divorce to stay only the portion of the judgment they were actually appealing. Nothing in rule 62 prohibited that in the first instance, but that would be a fine clarification. The problem is that that's not what this provision says or accomplishes. As written, it seems you could really never get a stay of the property distribution. Stays are only available to prevent dissipation of the marital estate. But the party seeking the stay is generally the one in the position to "dissipate," not the party who doesn't owe anything.

Commented [DB15]: I'm also confused by how URCP 62(j) interacts with URAP 8 generally. URCP 62(j) prohibits a variety of stays, but URAP 8 contains no analogous prohibitions.

This, along with some of the issues above, makes me think it would be a good idea to set up a joint committee with the URCP committee, to amend URCP 62 and UPAP 8 as a coordinated effort.

Tab A

Rule 62. Stay of proceedings to enforce a judgment.

Effective: 5/1/2026

Rule printed on October 28, 2026 at 3:52 pm. Go to https://www.utcourts.gov/rules *for current rules.*

(a) **Delay in execution.**No execution or other writ to enforce a judgment or an order to pay money underRule 7(j)(8) may issue until the expiration of 28 days after entry of the judgment or order, unless the court in its discretion otherwise directs.

(b) **Stay by bond or other security; duration of stay.**Except as provided in paragraph (j), at any time after judgment or an order to pay money is entered, a party may obtain a stay by providing a bond or other security.

(1) The stay takeseffect when the court approves the bond or other security and remains in effect for the time specified in the order that approves the bond or other security.

(2) In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay:

(A) an order that is certified as final under Rule 54(b) until the entry of a final judgment under Rule 58A;

(B) an order to pay money under Rule 7(j)(8) until the entry of a judgment under Rule 58A;

(C) a judgment until resolution of any motion made pursuant to Rule 50(b), Rule 52(b), Rule 59, Rule 60, or Rule 73; and

(D) a judgment until resolution of a motion made under this rule.

(c) **Injunction pending appeal.** When a party seeks an appeal from an interlocutory order, or takes an appeal from a judgment, granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of appellate proceedings upon such conditions for the security of the rights of the adverse party as are just.

(d) **Stay in favor of the United States, the State of Utah, or political subdivision.** When an appeal is taken by the United States, the State of Utah, a political subdivision, or an officer of agency of any of those entities, or by direction of any department of any of those entities, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security is required from the appellant.

(e) **Stay in quo warranto proceedings.** Where the defendant is adjudged guilty of usurping, intruding into or unlawfully holding public office, civil or military, within this state, the execution of the judgmentwill not be stayed on an appeal.

(f) **Power of appellate court not limited.** The provisions in this rule do not limit any power of an appellate court or of a judge or justice of an appellate court.

(g) **Form of bond; deposit in lieu of bond; stipulation on security; jurisdiction over sureties to be set forth in undertaking.**

(1) A bond given underparagraph (b) may be either a commercial bond having a surety authorized to transact insurance business underUtah Code title 31A, or a personal bond having one or more sureties who are residents of Utah having a collective net worth of at least twice the amount of the bond, exclusive of property exempt form execution. Sureties on personal bondsmust make and file a declaration setting forth in reasonable detail the assets and liabilities of the surety.

(2) The court may permit a deposit of money in court or other security to be given in lieu of giving a bond.

(3) The parties may by written stipulation agree to the form and amount of security.

(4) A bondmustprovide that each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served, and that the surety's liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

(h) **Amount of bond or other security.**

(1) Except as provided inparagraph (h)(2), a courtwillset the bond or other security in an amount that adequately protects the adverse party against loss or damage occasioned by the stay and assures payment after the stay ends. In setting the amount, the court may consider any relevant factor including:

(A) the debtor's ability to pay the judgment or order to pay money;

(B) the existence and value of other security;

(C) the debtor's opportunity to dissipate assets;

(D) the debtor's likelihood of success on appeal; and

(E) the respective harm to the parties from setting a higher or lower amount.

(2) Notwithstandingparagraph (h)(1):

(A) the presumptive amount of a bond or other security for compensatory damages is the amount of the compensatory damages plus costs and attorney fees; as applicable, plusthree years of interest at the applicable interest rate;

(B) the bond or other security for compensatory damagesmaynot exceed $25 million in an action by the plaintiffs certified as a class under Rule 23 or in an action by multiple plaintiffs in which compensatory damages are not proved for each plaintiff individually; and

(C) no bond or other security is required for punitive damages.

(3) If the court permits a bond or other security that is less than the presumptive amount in paragraph(h)(2)(A), the court may enter such orders as are necessary to protect the adverse party during the stay.

(4) If the court finds that the party seeking the stay has violated an order or has otherwise dissipated assets, the court may set the amount of the bond or other security without regard to the presumptive amount underparagraph(h)(2)(A) and limits in paragraph(h)(2)(B).

(i) **Objecting to sufficiency or amount of security**. Any party whose judgment or order to pay money is stayed or sought to be stayed pursuant toparagraph (b) may object to the sufficiency of the sureties on a bond or the amount thereof, or to the sufficiency of amount of other security given to stay the judgment by filing and giving notice of such objection. Either partyis entitled to a hearing on the objection upon five days notice or such shorter time as the court may order. The burdenis on the party seeking the stay tojustify the sufficiency of the sureties or other security and the amount of the bond or other security, unless the objecting party seeks a bond or other security in an amount greater than the presumptive amount inparagraph(h)(2)(A). The fact that a bond, its surety, or other security is generally permitted under this ruleisnot conclusive as to its sufficiency or amount.

(j) **Domestic relations actions.**

(1) Child custody, parent-time orders, child support orders.

(A) The court may not stay a child custody or parent-time order during an appeal, except that a court may stay an order that a child relocate outside the state of Utah if the court finds that such a stay is in the child's best interest;

(B) The court may not stay the collection of child support obligations during an appeal, except that the court may stay the collection of child support arrearages if the appellant provides a bond or other security approved by the court;

(2) **Divorce orders.**

(A) The court may not stay the collection of alimony during an appeal, except that the court may stay the collection of alimony arrearages if the appellant provides a bond or other security approved by the court;

(B) The court may stay an order distributing marital property during an appeal only to the extent necessary to protect marital property from dissipation.

(C) If the court enters a stay under paragraph (j)(2)(B), the court may:

(i) order an equitable transfer of property;

(ii) enjoin a party from selling, transferring, collateralizing, or otherwise encumbering property; and

(iii) require a party to provide a bond or other security.

Tab B

This opinion is subject to revision before final publication in the Pacific Reporter

2026 UT 1

IN THE

SUPREME COURT OF THE STATE OF UTAH

BRUCE VAN DUSEN, BRUCE QUADE, SHAWN SAVARINO, and DOMINIC SAVARINO,
Appellants and Cross-appellees,

v.

WASATCH COUNTY,
Appellee and Cross-appellant,

and

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS
Appellee.

No. 20250860
Heard December 8, 2025
Filed February 5, 2026*

On Direct Appeal

Fourth District Court, Wasatch County
The Honorable Jennifer A. Mabey
No. 230500146

Attorneys:

Robert E. Mansfield, Megan E. Garrett, Michael W. Combs, Salt Lake City, for appellants and cross-appellees

Scott H. Sweat, Jonathan B. Woodward, Heber City, for appellee and cross-appellant

David J. Jordan, David L. Mortensen, Tanner B. Camp, Justin W. Starr, Christopher A. Bates, Salt Lake City, for appellee

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* As of January 31, 2026, "The Supreme Court consists of seven justices." UTAH CODE § 78A-3-101(1). Pursuant to Utah Supreme Court Standing Order No. 18, this court sat and rendered judgment in this matter as a division of five justices.

JUSTICE PETERSEN authored the opinion of the Court, in which JUSTICE HAGEN, JUSTICE NIELSEN, JUDGE MORTENSEN, and JUDGE NEIDER joined.

Having recused themselves, CHIEF JUSTICE DURRANT and ASSOCIATE CHIEF JUSTICE POHLMAN do not participate herein; COURT OF APPEALS JUDGE DAVID N. MORTENSEN and DISTRICT COURT JUDGE CAMILLE L. NEIDER sat.

JUSTICE PETERSEN, opinion of the Court:

INTRODUCTION

¶1 The Church of Jesus Christ of Latter-day Saints announced plans to build an 88,000 square-foot temple in Heber Valley, Utah. Wasatch County approved the project. But a group of nearby residents (Petitioners) sued, alleging that the project violated local land-use regulations and state law. The district court rejected those claims and dismissed the Petitioners' case. And they appealed.

¶2 Shortly after prevailing in the district court, the Church began construction on the temple. Upon learning of this, Petitioners moved the district court to stop the Church from building while their appeal was pending. They argued that they would suffer irreparable harm if the Church continued to build but then lost on appeal. The district court agreed and granted the injunction, thereby halting construction during the appellate process.

¶3 The Church wants to begin building the temple immediately. Accordingly, it has appealed the district court's order, and it moves this court to vacate the district court's injunction under Utah Rule of Appellate Procedure 8. It acknowledges that if the injunction is lifted and it resumes construction, it is taking the risk that it may lose on appeal and, as a result, may incur both the cost of construction and the cost of restoring the site to its prior condition. However, it states that it is willing to take that risk.

¶4 In this scenario, Petitioners have not identified what irreparable harm the construction would cause. For this reason, we grant the Church's motion and suspend the injunction pending resolution of the appeal.

BACKGROUND

¶5 The Church announced plans to build a temple in Heber Valley. Wasatch County adopted Ordinance 23-16, approving a

legislative development agreement for construction of the project. The agreement authorized construction of an approximately 88,000 square-foot temple reaching 200 feet in height; an approximately 2,000 square-foot maintenance building; and related parking, landscaping, and improvements on an 18-acre site.

¶6 The Petitioners—property owners who live near the proposed temple site—feared that the project would directly and adversely impact their health, welfare, privacy, and quiet use and enjoyment of their property. They sued the County to stop the temple from being built. In their complaint, Petitioners alleged that Wasatch County's adoption of the Ordinance failed to comply with its preexisting land-use regulations, the Wasatch County Code, and state law. And they sought a declaration that the Ordinance was "invalid, unenforceable, void, and of no force and effect," and requested that it be "reversed and set aside." They also made a claim for injunctive relief to stop construction of the temple.

¶7 The Church intervened in the case. And the Church and the County later moved for summary judgment. Petitioners opposed the motion and filed their own cross-motion for summary judgment.

¶8 The district court granted summary judgment to the Church in full and to the County in part. And it denied Petitioners' cross-motion. The court concluded that Petitioners had failed to show that the Ordinance was "preempted or contrary to state or federal law." It also held that Petitioners failed to "overcome the highly deferential standard of review" governing whether land use actions are consistent with the County Land Use, Development, and Management Act. The court dismissed the case. And Petitioners appealed.

¶9 Soon thereafter, the Church began building the temple. In response, Petitioners moved under Utah Rule of Civil Procedure 62 to stop the construction pending their appeal. The district court concluded that Petitioners were asking for an injunction under rule 62(c), and it treated their motion accordingly. Ultimately, it granted the motion and enjoined the Church from construction activities during the pendency of Petitioners' appeal.

¶10 In its oral ruling, the court noted that both parties had assumed the standards applicable to preliminary injunctions also governed injunctions pending appeal. So the court adopted that approach and analyzed whether: "(1) there [was] a substantial likelihood that the applicant [would] prevail on the merits of the

underlying claim; (2) the applicant [would] suffer irreparable harm unless the order or injunction issue[d]; (3) the threatened injury to the applicant outweigh[ed] whatever damage the proposed order or injunction may cause the party restrained or enjoined; and (4) the order or injunction, if issued, would not be adverse to the public interest." UTAH R. CIV. P. 65A(f).

¶11 The court applied a "sliding scale" approach to the factors, concluding that the moving party must satisfy all four, though not in equal measure. Under that framework, the court explained that the weight assigned to each of the factors "may vary depending upon the circumstances." The court began its analysis with irreparable harm.

¶12 The court asked whether allowing construction to proceed during appeal would cause Petitioners irreparable harm if the Church ultimately lost. It concluded that it would, reasoning that Petitioners would suffer irreparable harm by being forced to endure construction activity only for that activity to later be deemed unlawful or invalid. The court therefore found that this factor weighed in Petitioners' favor.

¶13 The court next balanced the threat of this harm against the harm the Church asserted it would suffer if an injunction issued. The Church identified increased construction costs as its primary harm if it were required to wait until the end of the appeals process before breaking ground. The court reasoned that, "by their very nature," irreparable injuries outweigh monetary damages and therefore concluded that this factor, too, weighed in Petitioners' favor.

¶14 Turning to the public-interest factor, the court acknowledged that many Church members were eager to visit a temple in Wasatch County. At the same time, the court identified a strong public interest in "ensuring that land use decisions are made in compliance with applicable law." The court further reasoned that "it is in the public interest, as a whole, to have finality in the legal decision determining whether the construction of the temple fits that criteria." Pending that final determination on appeal, the court held that an injunction maintaining the status quo would be in the public interest. The court defined the status quo as "the last uncontested status between the parties which preceded the controversy"—here, "the vacant land upon which the [Church] seeks to build."

¶15 With respect to the final factor—Petitioners' likelihood of success on the merits—the court acknowledged that it had already ruled against Petitioners on the merits. The court reaffirmed its belief that its prior ruling was "correct in light of the undisputed facts in this matter and the controlling caselaw." But the court also reiterated its "sliding scale" approach to the injunction factors, explaining that a weaker showing on one factor may suffice when the remaining factors strongly favor relief.

¶16 The district court concluded that the equities weighed "heavily in favor of the injunction." Because those factors strongly favored relief, the court held that, as to the likelihood of success on the merits, it was "sufficient that the petitioners have raised questions going to the merits that are sufficiently serious and substantial that they are fair ground for continued litigation." The court also emphasized that its underlying merits decision would be reviewed de novo on appeal. For these reasons, the court concluded that the likelihood-of-success factor likewise favored granting the injunction.

¶17 Having granted the injunction, the court next addressed whether a bond or other security was required. The Church presented evidence that if construction were delayed by 12 to 18 months, it would cost the Church between $7.8 to $11.4 million in increased construction costs. The court rejected this amount as too high. Instead, it ordered Petitioners to post a $10,000 bond to compensate the Church for its potential costs and attorney fees on appeal, in the event it prevailed.

¶18 The Church appealed the district court's rule 62(c) ruling. Simultaneously, it moved this court under Utah Rule of Appellate Procedure 8 to suspend[1] the district court's injunction.

STANDARD OF REVIEW

¶19 The merits of the underlying appeal are not before us here; we consider only the injunction. The Church pursues two different avenues of relief. First, it has appealed the district court's injunctive order and asks us to reverse it. We review a district court's decision

[1] The Church has styled its motion as a "Motion to Vacate," under Utah Rule of Appellate Procedure 8(a)(1)(B). However, the rule does not include the word "vacate," so we construe the Church's motion as a motion to "suspend" the district court's injunction. The practical result is the same.

under rule 62(c) for an abuse of discretion. UTAH R. CIV. P. 62(c) ("[T]he court *in its discretion* may suspend, modify, restore, or grant an injunction during the pendency of appellate proceedings upon such conditions for the security of the rights of the adverse party as are just." (emphasis added)). However, we review any underlying legal issues for correctness. *Jenco, LC v. Valderra Land Holdings, LLC*, 2025 UT 20, ¶ 15 n.7, 572 P.3d 381 ("Because misapplication of the law constitutes an abuse of discretion, correctness is the appropriate standard of review." (cleaned up)). Second, the Church has moved this court under Utah Rule of Appellate Procedure 8 for an order suspending the injunction. Such a motion asks us to exercise our own discretion in the first instance. Thus, no standard of review applies.

ANALYSIS

¶20 We may proceed either by addressing the Church's appeal of the district court's rule 62(c) injunctive order, or by resolving the Church's rule 8 motion. We elect to resolve the rule 8 motion. Although we decide in the first instance whether to grant relief under rule 8, we consider the district court's order and its reasoning because the Church asks us to suspend that order. Ultimately, we conclude that an injunction is not warranted under the circumstances here, and we suspend the injunction.

¶21 Under rule 8, "A party may move the appellate court for . . . an order suspending, modifying, restoring, or granting injunctive relief." UTAH R. APP. P. 8(a)(1)(B). However, before seeking such relief, "a party must first seek the requested relief in the trial court unless the party can show extraordinary circumstances or that the trial court has already rejected the basis for the requested relief." *Id.* R. 8(a)(2). If the movant has done so, it must include, "as applicable, the reason the trial court denied the requested relief, [or] the reason the trial court denied the basis for the requested relief." *Id.* R. 8(b)(2). If the appellate court decides to grant the requested relief, it:

> may waive the requirement for a bond or other security if the movant demonstrates:
>
> (A) a substantial likelihood of prevailing on appeal;
>
> (B) the movant will suffer irreparable harm without the injunction;

> (C) the irreparable harm to the movant outweighs whatever harm the injunction may cause the party enjoined; and
>
> (D) the injunction is not adverse to the public interest.

Id. R. 8(c)(3).

¶22 Thus, in deciding whether to grant the Church's motion, we first consider whether it sought the requested relief in the trial court as rule 8(a)(2) requires. In this case, it was the Petitioners who initially sought relief in the trial court. And it was the Church who opposed it. But we conclude that by opposing Petitioners' motion in the trial court, the Church satisfied rule 8(a)(2)'s requirement that the requested relief first be sought there. Although the Church was not the movant in the trial court, it sought from that court the same relief it requests from us—that no injunction issue. Accordingly, we conclude that the Church has satisfied rule 8(a)(2).

¶23 Next, the movant must provide "the reason the trial court denied the requested relief." *Id.* R. 8(b)(2). This requirement does not reflect a standard-of-review framework; our decision on a rule 8 motion is not conditioned on affirming or reversing the district court's order. But a rule 8 movant must persuade us that we should reach a different result than did the district court. And to do that, we need to know why the district court denied the relief the movant seeks from us.

¶24 In the district court, the Petitioners asserted that an injunction pending appeal was necessary because otherwise, they would suffer irreparable harm. They presumed that the preliminary injunction factors outlined in Utah Rule of Civil Procedure 65A applied to their request under rule 62. Accordingly, they argued that: (1) there was a substantial likelihood they would prevail on appeal; (2) they would suffer irreparable harm unless the injunction issued; (3) the threatened injury to Petitioners outweighed whatever damage the proposed injunction may cause the Church; and (4) the injunction, if issued, would not be adverse to the public interest. *See* UTAH R. CIV. P. 65A(f).

¶25 Addressing the parties' arguments under this framework, the district court ultimately concluded that Petitioners would suffer irreparable harm if the Church commenced construction and then lost on appeal.

¶26 In addressing Petitioners' motion to us, both parties assume that our determination of whether to grant or modify

injunctive relief under rule 8 is governed by the preliminary injunction standard outlined in rule 65A. But rule 8 does not say that. Instead, it directs us to consider those factors only when deciding whether to waive any bond requirement. However, neither party has addressed the language of rule 8.

¶27 That said, in deciding how to exercise our discretion under rule 8, we consider the record and arguments presented to us. And importantly, the reason the district court granted injunctive relief to the Petitioners was to prevent what it deemed to be irreparable harm. The primary question before us, then, is whether we agree in substance with the district court's assessment. Because we conclude that Petitioners have not identified any specific irreparable harm that may occur absent an injunction pending appeal, we grant the Church's motion and suspend the injunction.

¶28 Irreparable harm exists when a party's injury cannot be remedied by monetary damages or other legal relief, even if that party ultimately prevails on the merits. *See Johnson v. Hermes Assocs.*, 2005 UT 82, ¶ 18, 128 P.3d 1151. To establish irreparable harm, a party must show that it is unlikely to be made whole by an award of monetary damages or other legal remedy. *See id.* Put differently, irreparable harm typically refers to an injury which "cannot be adequately compensated in damages." *Carrier v. Lindquist*, 2001 UT 105, ¶ 26, 37 P.3d 1112 (cleaned up).

¶29 The district court found that the Petitioners would suffer irreparable harm "if construction on the temple is allowed to proceed, and then later it was determined to be unlawful" on appeal. But the court did not provide further specifics.

¶30 In their briefing before us, Petitioners have expanded on the harm they would suffer if the Church began constructing the temple and then lost on appeal. Petitioners assert that, because they live near the temple, they "would immediately suffer harms of loss of privacy, noise and light pollution, and other detrimental impacts." However, they do not explain how those harms would arise from the commencement of construction, as opposed to the operation of a fully constructed temple.

¶31 Petitioners also assert, in broad terms, that construction will cause environmental harm. Utah caselaw has, at times, recognized environmental damage as irreparable. For example, in *Hunsaker v. Kersch*, we explained: "Trees, in particular, might take many years to replace. Loss of agricultural, ornamental, and shade value could be fundamentally irreparable." 1999 UT 106,

¶ 10, 991 P.2d 67. But Petitioners offer no factual basis to support such a claim here. They do not describe the lot, the surrounding land, or the local ecology. Nor do they allege that construction would destroy any unique environmental feature—such as ornamental or shade value—or pose environmental threats incapable of remediation through compensatory damages. *See, e.g.*, *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1261 (10th Cir. 2003) (holding that plaintiffs demonstrated irreparable injury where development threatened the death of bald eagles and destruction of their breeding habitat).

¶32 Finally, Petitioners refer to a "Staff Report" in the record, which states that the temple would create traffic that is significantly higher than a typical residential development. But this potential harm also seems to flow from people visiting a completed temple, not necessarily from the initial construction process.

¶33 For its part, the Church explained at oral argument that it recognizes that, by beginning construction before the appeal is final, it is assuming the risk that it could lose on appeal. In that scenario, the Church understands that it may well lose what it spent on construction and bear the cost of restoring the site to its previous condition.

¶34 We acknowledge that such an eventuality may cause inconvenience for Petitioners and that the land, which is now vacant, would be changed. But Petitioners have not explained how, if they prevail on appeal and the construction is halted, they will have been irreparably harmed in the interim.

¶35 Without that, we are persuaded that the injunction in this case should be suspended.

CONCLUSION

¶36 For these reasons, we grant the Church's motion under rule 8 and suspend the injunction pending the appeal of this matter.

Tab C

This opinion is subject to revision before final publication in the Pacific Reporter

2025 UT 20

IN THE

SUPREME COURT OF THE STATE OF UTAH

JENCO, LC; DEAN GARDNER INVESTMENT, LC; and F.M. SNOW PROPERTIES, LLC,
Appellees,

v.

VALDERRA LAND HOLDINGS, LLC,
Appellant.

No. 20241230
Heard May 14, 2025
Filed July 10, 2025

On Direct Appeal

Fifth District Court, Washington County
The Honorable Keith C. Barnes
No. 210500876

Attorneys:

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Lewis P. Reece, Devon J. Herrmann, St. George, for appellant

JUSTICE POHLMAN authored the opinion of the Court, in which CHIEF JUSTICE DURRANT, ASSOCIATE CHIEF JUSTICE PEARCE, JUSTICE PETERSEN, and JUDGE OLIVER joined.

Having recused herself, JUSTICE HAGEN does not participate herein; COURT OF APPEALS JUDGE AMY J. OLIVER sat.

JUSTICE POHLMAN, opinion of the Court:

INTRODUCTION

¶1 Valderra Land Holdings, LLC owns real property that is encumbered by a performance trust deed held for the benefit of

Jenco, LC and others.[1] After Valderra defaulted on certain of its obligations to Jenco, Jenco sought judicial foreclosure of the property. Valderra responded with a counterclaim, arguing that it had a right to cure its default and joining Jenco in seeking the court's determination of the amount owed. The district court ultimately entered an order setting the payoff amount and directing Jenco to instruct the trustee to reconvey the property upon Valderra's tender of funds.

¶2 Jenco, however, did not instruct the trustee to release the trust deed as ordered. Instead, when Valderra tendered the payoff amount, Jenco appealed the judgment and moved the court for a stay of the obligation to reconvey the property, invoking rule 62(b) of the Utah Rules of Civil Procedure. Over Valderra's objection, the court ordered a stay during the pendency of Jenco's appeal.

¶3 In this separate appeal, Valderra contends that the district court erred in granting the stay under rule 62(b). Valderra argues that because the portion of the underlying judgment at issue—the order directing Jenco to have the property reconveyed—is injunctive in nature, Jenco was not entitled to a stay under that rule. Valderra reasons that rule 62(b) applies only to stays of orders or judgments to pay money, not injunctive orders, which are governed by rule 62(c). Valderra further asserts that this error matters because the court granted the stay as a matter of right and did not determine whether the "conditions for the security of the rights of the adverse party . . . are just." *See* UTAH R. CIV. P. 62(c). We agree with Valderra and reverse based on this threshold error.

BACKGROUND[2]

The Litigation and Judgment

¶4 Valderra owns real property in Washington County, Utah, that is encumbered by a performance trust deed. The trust deed secures Valderra's obligations to make certain payments to Jenco related to the sale of lots and to pay taxes associated with the real property.

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[1] There are three beneficiaries of the trust deed: Jenco, LC; Dean Gardner Investment, LC; and F.M. Snow Properties, LLC. For simplicity, we refer to them collectively as Jenco.

[2] In the absence of factual findings or an order identifying undisputed material facts, we derive this background from the undisputed factual allegations in the parties' pleadings.

¶5 Jenco is the beneficiary of the trust deed, and, after Valderra defaulted on its obligations by not paying property taxes, Jenco filed a complaint for judicial foreclosure. Jenco also sought a declaration that Valderra owed Jenco $1,270,061.54 in principal, plus interest, costs, and attorney fees.

¶6 Valderra answered Jenco's complaint, admitting that it owed the principal amount Jenco claimed. Valderra also filed a counterclaim, seeking a determination of the payoff amount along with an order requiring Jenco to instruct the trustee to reconvey the property to Valderra upon its tender of funds.

¶7 At Valderra's request, the district court entered judgment on the pleadings. It ordered that "upon tender of $1,270,061.54 to [Jenco], plus interest, costs and reasonable attorney's fees . . . , [Jenco] shall instruct the [current] trustee to reconvey the property" to Valderra. After the court determined the amount of interest and attorney fees, Jenco appealed the judgment, raising issues about the reconveyance and the calculations of interest and attorney fees. That separate appeal remains pending.

Jenco's Motion to Stay

¶8 Meanwhile, in June 2024, Valderra tendered the payoff amount to Jenco via cashier's check. Three months later, instead of instructing the trustee to proceed with reconveyance as required by the court's order, Jenco filed an ex parte motion to stay the judgment's enforcement, invoking rule 62(b) of the Utah Rules of Civil Procedure.[3] It also delivered Valderra's cashier's check to the district court as security.

¶9 Within hours of Jenco's filing of the motion, Valderra filed an objection and moved to strike it.[4] Citing rules 7(*l*) and (m) of the Utah Rules of Civil Procedure, Valderra argued that it was improper for Jenco to file its motion to stay ex parte and to seek a

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[3] Jenco labeled the motion ex parte and simultaneously submitted it for decision, inviting the district court to grant the motion without awaiting Valderra's response. *See* UTAH R. CIV. P. 7(g) ("When briefing is complete or the time for briefing has expired, either party may file a 'Request to Submit for Decision,' . . . .").

[4] Although Jenco labeled its motion ex parte, Valderra received notice of the filing because it was served through the court's electronic filing system.

ruling without allowing Valderra time to respond. Valderra further explained that the court must account for the harm it would suffer if the trust deed continued to encumber the property during the appeal.

¶10 The next day, Jenco filed an opposition to the motion to strike and to Valderra's objection, defending its filing. Jenco characterized Valderra's objection as "patently specious and unsupported" and invited the court to enter the stay as requested. And ten days later, before the fourteen days had run for Valderra to file its opposition memorandum,[5] Jenco again submitted the matter for decision.

¶11 Valderra objected to the second notice to submit, stating that it intended to file an opposition according to the usual timeline if the court declined to strike Jenco's ex parte motion. And a few days later, Valderra filed that response, arguing that rule 62(b) was inapplicable because "Jenco is not obligated to pay money under the Order it seeks to stay." Valderra asserted that Jenco instead needed to seek relief under rule 62(c), because the relevant order was injunctive as it required Jenco to do something, namely, instruct the trustee to reconvey the property. Valderra also reiterated that without reconveyance, its development of the property would be impeded, which would harm it financially while the appeal proceeded. Valderra further argued that the cashier's check offered by Jenco as security was insufficient to protect its interests.

¶12 After a few additional filings, the district court granted Jenco's motion to stay. The court did not appear to have considered Valderra's opposition memorandum or the filings that followed. The court's initial ruling referred to Jenco's second notice to submit, which identified only Jenco's ex parte motion, Valderra's motion to strike and objection, and Jenco's opposition memorandum as the relevant filings. But the court's subsequent and more detailed

[5] *See id.* R. 7(d)(1) (permitting a nonmoving party to file a memorandum opposing a motion within fourteen days after the motion is filed).

order, which Jenco prepared, incorporated some of Jenco's subsequent arguments.[6]

¶13 After the district court entered its ruling, Valderra filed an objection under rule 62(i), in which it requested a hearing and argued that the amount of security provided for the stay entered under rule 62(b) was insufficient. At Jenco's invitation, the court treated Valderra's filing as a motion to reconsider the court's decision granting the ex parte motion to stay. Viewing the rule 62(i) objection as "nothing other than a repetition of earlier efforts," the court declined to "revisit the decision."

¶14 Valderra appealed the stay and requested expedited review, which we granted.

ISSUE AND STANDARD OF REVIEW

¶15 Valderra contends that the district court erred in its application of rule 62 of the Utah Rules of Civil Procedure by granting as a matter of right Jenco's motion for stay of the court's order requiring reconveyance of the trust deed. Both sides agreed in their briefing that this issue involves the application and interpretation of a rule of civil procedure and that we should review the district court's decision for correctness.[7] *See Simler v. Chilel*, 2016 UT 23, ¶ 9, 379 P.3d 1195.

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[6] Jenco incorporated into the proposed order arguments it had made in a memorandum that was not identified as a basis for the court's ruling. The court, however, signed that order, and so we review it as the operative decision.

[7] Jenco asserted at oral argument that appellate courts review a district court's grant of a stay for abuse of discretion. Although we have indicated that a decision to stay enforcement of a judgment is discretionary, *see Utah Res. Int'l, Inc. v. Mark Techs. Corp.*, 2014 UT 60, ¶ 11, 342 P.3d 779, the applicable standard of review depends on the nature of the challenge under review. Here, Valderra argues that the court misapplied rule 62. Because "[m]isapplication of the law constitutes an abuse of discretion," *State v. Boyden*, 2019 UT 11, ¶ 19, 441 P.3d 737, correctness is the appropriate standard of review, *see State v. Levin*, 2006 UT 50, ¶ 20, 144 P.3d 1096 (explaining that "an appellate court reviews a trial court's conclusions of law for correctness").

ANALYSIS

¶16 Our procedural rules allow a party who appeals an adverse judgment to seek a stay of its enforcement for the duration of the appeal. Rule 8 of the Utah Rules of Appellate Procedure generally requires that a party first ask the district court for the stay. *See* UTAH R. APP. P. 8(a)(2). And the standards and other requirements governing such a request are found in rule 62 of the Utah Rules of Civil Procedure.

¶17 Valderra challenges the district court's order granting Jenco's ex parte motion for a stay of its reconveyance obligation pending Jenco's appeal of the court's judgment. Valderra contends that Jenco was not entitled to a stay under rule 62(b) and that, rather, Jenco needed to move under rule 62(c), which affords the court discretion and requires it to consider Valderra's interests and whether the conditions for the stay "are just." *See* UTAH R. CIV. P. 62(c).

¶18 We agree with Valderra that the district court erred in granting a stay under rule 62(b). We also conclude that this error harmed Valderra, and thus the stay and the court's related order must be set aside.

I. THE DISTRICT COURT ERRED IN GRANTING JENCO A STAY UNDER RULE 62(b)

¶19 As stated, rule 62 provides the standards and other requirements that govern requests for the stay of proceedings to enforce a judgment or order. In doing so, the rule differentiates between a stay of the enforcement of "a judgment or order to pay money" and the suspension of "an injunction." UTAH R. CIV. P. 62(b)–(c). The former is governed by paragraph (b) and the latter by paragraph (c).

¶20 First, rule 62(b). Unless otherwise prohibited by law or the court's rules, the rule allows a party to "obtain a stay of the enforcement of a judgment or order to pay money by providing a bond or other security." *Id.* R. 62(b). The rule generally does not vest the district court with discretion to deny such a stay, and so some have referred to a stay to enforce a money judgment as a matter of right.[8] *See, e.g.*, *Jensen v. Schwendiman*, 744 P.2d 1026, 1027

[8] We say "generally" because rule 62(b) includes a subpart—62(b)(2)—which vests the court with discretion to stay certain (continued . . .)

(Utah Ct. App. 1987) (per curiam) (stating "a money judgment will be stayed as a matter of right upon posting a supersedeas bond" under an earlier version of rule 62); *see also* 11 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 2905, Westlaw (database updated May 2025) (discussing federal rule 62).

¶21 But although rule 62(b) generally allows a party to secure a stay of a money judgment or order as a matter of right, rule 62 affords the nonmoving party some protection. With a few exceptions, the rule requires the court to "set the bond or other security in an amount that adequately protects the adverse party against loss or damage occasioned by the stay," UTAH R. CIV. P. 62(h)(1), and it allows the adverse party to object to and receive a hearing on the sufficiency of the security, *id.* R. 62(i).

¶22 Next, rule 62(c). While rule 62(b) applies to the stay of money judgments or orders, rule 62(c), in comparison, concerns the stay of an injunctive order during an appeal. It states, in relevant part, "When a party . . . takes an appeal from a judgment[] granting . . . an injunction, the court in its discretion may suspend . . . an injunction during the pendency of appellate proceedings upon such conditions for the security of the rights of the adverse party as are just." *Id.* R. 62(c). Thus, a party may move under rule 62(c) to suspend an injunctive order, but the court retains discretion to grant or deny such a request, and if the court opts to grant the request, the rule requires the court to set "just" conditions securing the nonmoving party's rights. *Id.*

¶23 We conclude that rule 62(b) does not apply here. We recognize that the district court's order required the payment of money; that is, it required Valderra to tender the payoff amount to Jenco. But that is not the order Jenco sought to stay. Jenco, having already received Valderra's tender, sought to stay the order requiring it to instruct the trustee to reconvey the property. That order is not an "order to pay money," *id.* R. 62(b), and thus rule 62(b), by its terms, does not apply.

¶24 Further, we share Valderra's view that Jenco's motion should have been brought, if at all, under rule 62(c). We agree that,

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orders and, in some cases, for only a limited time. This subpart is not implicated here, and when we refer to rule 62(b) in this opinion, we refer to its application generally and not its more specific application under rule 62(b)(2).

as Valderra puts it, "When an order commands a party to perform an action, like instructing a trustee to reconvey property, the order is injunctive." *See Injunction*, BLACK'S LAW DICTIONARY (12th ed. 2024) (defining an injunction as "[a] court order commanding or preventing an action"). Here, the relevant part of the order that Jenco is subject to, and which it sought to suspend, is an order commanding it to act. Thus, although that order isn't labeled as an injunction, it is injunctive in nature and falls naturally within rule 62(c).[9]

¶25 The district court did not perceive this distinction, and it incorrectly adopted Jenco's view that rule 62(b) applied and that Jenco was "entitled to a stay" of its reconveyance obligation as a matter of right. The court began by appropriately recognizing that rule 62 "authorizes the use of 'other security' including cash . . . to 'preserve the status quo pending the outcome of the case.'" (Quoting *Rothwell v. Rothwell*, 2023 UT App 51, ¶ 4, 530 P.3d 955.) But the court took a wrong turn when it overlooked the plain language of rule 62(b) and instead relied on federal law applying a former federal analog to Utah's rule 62.

¶26 To the extent Utah's rules and the federal rules "are similarly worded," we at times "turn to the federal rules . . . and

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[9] Courts applying the provision currently housed in federal rule 62(d)—a provision akin to Utah's rule 62(c)—have reached the same conclusion. *See, e.g.*, *J. Perez & Cia., Inc. v. United States*, 747 F.2d 813, 814–15 (1st Cir. 1984) (stating that under federal rule 62, a case about "an agency's suspension order . . . is more naturally viewed as a case involving an order to do, or not to do, something (that is, involving something like an injunction) rather than a case involving a money judgment"); *Centauri Shipping Ltd. v. W. Bulk Carriers KS*, 528 F. Supp. 2d 186, 188–89 (S.D.N.Y. 2007) (analyzing a motion under the part of rule 62 applicable to injunctions and not the part applicable to money judgments because the relevant order was an order "to do an affirmative act—namely, to return the surety bond" (cleaned up)); *In re Fullmer*, 323 B.R. 287, 291–92 (Bankr. D. Nev. 2005) (concluding that injunctions under federal rule 62 "include injunctions requiring specific performance"); *Gov't Guarantee Fund of Fin. v. Hyatt Corp.*, 167 F.R.D. 399, 400–01 (D.V.I. 1996) (explaining that an order requiring a corporation to vacate a hotel "was in the nature of an injunction" and thus applying the provision of federal rule 62 for injunctions).

cases interpreting them for . . . guidance." *Arbogast Fam. Tr. v. River Crossings, LLC*, 2010 UT 40, ¶ 16, 238 P.3d 1035 (cleaned up). However, before relying on federal law, courts must first "look to the express language" of Utah's rule. *Id.* (cleaned up). And where Utah's rule is materially different from the analogous federal rule, federal caselaw offers limited guidance.

¶27 Here, the district court concluded that Jenco was "entitled to a stay" based on its observation that "[f]ederal courts have made clear that the reach of Federal Rule 62(b) goes beyond money judgments" and that "[s]tays are granted as a matter of right upon the posting of such security." But the federal version of rule 62(b) does not include the "judgment or order to pay money" phrase found in Utah's version of the rule.[10] *Compare* FED. R. CIV. P. 62(b), *with* UTAH R. CIV. P. 62(b). Thus, these federal cases do not inform the application of Utah's rule 62(b).

¶28 Despite having provided the federal cases to the district court, Jenco does not defend on appeal the court's reliance on them. Instead, Jenco asserts generally that Utah's rule 62(b) "allows a party to seek the stay of a judgment or an order." But in making its argument, Jenco neglects to address the qualifier embedded in rule 62(b), which generally limits its application to judgments or orders "*to pay money*." UTAH R. CIV. P. 62(b) (emphasis added). And because that qualifier limits rule 62(b)'s application, the court erred in granting Jenco's motion to stay.

II. VALDERRA WAS PREJUDICED BY THE DISTRICT COURT'S ERROR

¶29 Our civil rules require that we "disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." UTAH R. CIV. P. 61. Said differently, we will not reverse a district court's decision where its error is so "sufficiently inconsequential that there is no reasonable likelihood that it affected the outcome of the case." *Armed Forces Ins. Exch. v. Harrison*, 2003 UT 14, ¶ 22, 70 P.3d 35 (cleaned up).

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[10] Compared to Utah's rule, the current version of federal rule 62(b) speaks in more general terms, stating, "At any time after judgment is entered, a party may obtain a stay by providing a bond or other security." FED. R. CIV. P. 62(b). The cases cited by the district court—some nearly forty years old—applied previous versions of the federal rule, none of which contained the relevant language of Utah's rule 62(b).

¶30 Valderra contends that its substantial rights were affected by the district court's error. It argues that because the court granted Jenco's motion as a matter of right under rule 62(b), it "failed to ask the preliminary question of whether any stay was proper at all." Valderra also asserts that had Jenco brought its motion under 62(c), the court would have had to consider whether the payoff amount would provide adequate protection against the financial harm Valderra would suffer from the continued encumbrance of its property. Jenco responds that even if the court erred in its application of rule 62(b), "the outcome would have been the same."

¶31 We agree with Valderra that it was prejudiced by the district court's error. Specifically, we conclude that the result would have been different because if the court had correctly applied rule 62, it is reasonably likely that it would have denied Jenco's motion, which was brought exclusively under rule 62(b).

¶32 Jenco argued that the rule entitled it to a stay as a matter of right, and that the court need not even await Valderra's response.[11] Jenco also presumed that its proffered security—the tendered payoff funds—was sufficient, and it made no attempt to show that its suggested conditions for the stay were just. *See* UTAH R. CIV. P. 62(c). The court accepted Jenco's claim that its motion was appropriately filed under rule 62(b), and it granted the motion to stay without addressing Valderra's concerns. Had the court correctly applied rule 62, it would have concluded that rule 62(b) did not apply because Jenco did not seek a stay of an order to pay money, and thus it's reasonably likely that it would have denied the motion and the stay outright.

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[11] We pause to note that we agree with Valderra that Jenco was wrong to file the motion ex parte; Jenco has not identified a statute or rule permitting the motion to be filed as such. *See* UTAH R. CIV. P. 7(m) (allowing ex parte motions if permitted by a "statute or rule"). Similarly, we agree with Valderra that our rules do not authorize action on a motion to stay without awaiting a response. *See id.* R. 7(*l*)(1). Rule 7(*l*)(1) identifies four specific motions that may be acted upon without response. *Id.* R. 7(*l*)(1)(A)–(D) (identifying motions to allow an overlength filing, to extend time, to admit an attorney pro hac vice, and for a pretrial conference). And the rule includes a catch-all for "other similar motions." *Id.* R. 7(*l*)(1)(E). But a motion to stay a judgment affects substantive rights and is unlike the four housekeeping motions identified in that rule.

¶33 Further, even if the court had, on its own, evaluated the motion under rule 62(c), it is reasonably likely that the outcome still would have been different because the process would have been different. The court would have had the opportunity to exercise its discretion and to consider whether Jenco's proposed stay was necessary and whether its terms were adequate to protect Valderra's rights. It seems that under those circumstances, it is at least reasonably likely that if a stay had been granted, it would have been on different terms.

III. We Vacate the Denial of Valderra's Rule 62(i) Objection and Deny Valderra's Request for Appellate Attorney fees

¶34 As two final matters, we address Valderra's challenge to the district court's denial of its rule 62(i) objection and its request for attorney fees arising from this appeal.

¶35 First, regarding Valderra's rule 62(i) objection, we vacate in its entirety the district court's order rejecting Valderra's objection. The court's order granting Jenco's motion for a stay under rule 62(b) infected its consideration of Valderra's rule 62(i) objection—an objection only made necessary because of the court's misapplication of rule 62(b). Thus, although the merits of that decision are mooted by our reversal of the court's order granting the ex parte motion for a stay, we vacate that decision and foreclose any suggestion that decisions embedded in that order are binding in any future proceeding.[12] If Jenco seeks a stay under rule 62(c), the court should consider that request on a clean slate.[13]

¶36 Second, Valderra requests an award of its reasonable attorney fees arising from this appeal. Valderra states that "attorney fees were awarded below in the district court's final

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[12] The district court was required to hold a hearing on Valderra's objection to the sufficiency of the security when the court was proceeding under rule 62(b). *See supra* ¶ 21. But because we reverse the court's rule 62(b) decision, we need not further address its failure to hold a hearing.

[13] Relatedly, in this appeal, Valderra has invited us to instruct the district court on issues relating to what damages could be available to Valderra arising out of the non-reconveyance of the trust deed. We decline this invitation because these issues are not properly before us and must first be adjudicated, if at all, in the district court.

judgment," and it cites *Cougar Canyon Loan, LLC v. Cypress Fund, LLC*, 2019 UT App 47, 440 P.3d 884, for the rule that appellate courts ordinarily award appellate attorney fees "when a party was awarded fees . . . below and then prevails on appeal." *Id.* ¶ 15 n.11 (cleaned up).

¶37 The rule Valderra cites applies when the party claiming fees on appeal "was awarded attorney fees below . . . and prevails on the issue that served as the basis for the award." *UMIA Ins. v. Saltz*, 2022 UT 21, ¶ 68, 515 P.3d 406. Although Valderra has prevailed in this appeal, it was not awarded fees below—Jenco was. Thus, the rule Valderra invokes is not satisfied, and we accordingly deny its request. *See id.*

CONCLUSION

¶38 Jenco sought to stay the enforcement of an injunctive order requiring it to reconvey a trust deed, so it was not entitled to a stay under rule 62(b), which applies to orders to pay money. Accordingly, we reverse the district court's grant of Jenco's rule 62(b) motion and vacate its order rejecting Valderra's objection filed under rule 62(i).