Abortion, Actual Innocence, and Much More: Cases and Issues in the Pipeline at the Utah Supreme Court

by Carol Funk

Much of the time, the Utah Supreme Court’s docket attracts little attention. Parties to pending cases, and lawyers with a specific interest in the subject matter, may watch for the release of an opinion of significance to them. But most members of the Bar, the press, and the public are generally unaware of cases and issues on the court’s docket, at least until the Utah Supreme Court hears oral argument or issues its decision.

This year is different. Recent changes in the makeup of the five-member court, as well as substantial, highly publicized opinions of the United States Supreme Court, have generated significant interest in the Utah Supreme Court’s proceedings and the questions of state law the court may address. The Bar, the press, and the public are now paying more attention to the Utah Supreme Court and the matters heading toward adjudication therein.

But when it comes to the practice of law, interest in and awareness of Utah Supreme Court proceedings should not depend on whether high-profile matters are pending or on whether the court’s membership has changed. It is always useful for members of the Bar to be informed of cases and issues under review in the Utah Supreme Court. Attorneys can more effectively raise and preserve errors if they are aware that governing authority is being challenged in the state’s highest court. Understanding soon-to-be-adjudicated issues is also critical when navigating proceedings, crafting arguments, assessing the strength or weakness of a claim or charge, or determining the settlement value of litigation.

This article thus provides visibility into the cases and issues currently in the pipeline at the Utah Supreme Court. The article is divided into two parts. First, the article covers relevant background, including recent changes in the justices serving on the Utah Supreme Court and general information regarding the court’s docket. Second, the article outlines specific issues that have been or are likely to be raised in many of the most significant cases on the Utah Supreme Court’s docket. The article highlights more criminal than civil proceedings because of the wide applicability of the issues raised in many criminal proceedings on the court’s docket.

The article is compiled based on matters listed as pending in the Utah Supreme Court in late October 2022. It should therefore capture the cases and issues that will be addressed in opinions issued by the Utah Supreme Court in 2023 and into 2024. But while the article highlights many cases and issues likely to be addressed in that period, it does not provide information on all fifty-plus matters now pending in the Utah Supreme Court.

That information is, however, important. And for those interested in accessing it, a list of all matters pending in the Utah Supreme Court as of late October 2022 is provided at https://rqn.com/appellate-practice/utsupct-open-cases. (Judicial and attorney discipline proceedings are not included.) The cases are identified by title, case number, and subject matter (e.g., civil, criminal, capital felony, etc.).

There are also links provided to at least one substantive document filed in each case. Accordingly, the petition, retention request, briefing, and/or other substantive document(s) filed in each case, including the petition and answer filed in State v. Planned Parenthood Association of Utah, in which the state asks the Utah Supreme Court to permit enforcement of the state’s

PROVIDING VISIBILITY INTO THE CASES, ISSUES, AND ARGUMENTS IN THE UTAH SUPREME COURT

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“trigger law,” may be found at the above-noted address. A review of those documents will provide insight into the issues and arguments that have been or are likely to be raised in each proceeding.

This information may also be accessed via this QR code:

**UTAH SUPREME COURT 2023: AN OVERVIEW**

Last year, two justices retired from the Utah Supreme Court: Constandinos “Deno” Himonas and Thomas R. Lee. The Governor appointed, and the senate confirmed, Diana Hagen and Jill M. Pohlman to fill the two vacancies. Both were serving as judges on the Utah Court of Appeals at the time of their appointments.

Only five women have been appointed to the Utah Supreme Court in its 125-year history. Three of those women now serve on the court together, comprising its first female majority: Justice Hagen, Justice Pohlman, and Justice Paige Petersen, who was appointed in 2017. They serve alongside Chief Justice Matthew B. Durrant, who was appointed to the court in 2000, and Associate Chief Justice John A. Pearce, who was appointed in 2015.

The Utah Supreme Court’s term is not official or formal. But, as a matter of practice, it generally runs from September through August, and the court endeavors to issue opinions in the same term in which matters are argued. In other words, if a matter is argued between September and May (the court generally does not hear argument in July or August and often does not hear argument in June), the court will endeavor to issue its decision by the following September — or close in time thereafter. But there are usually some holdover cases, as the back-and-forth on matters with concurring or dissenting opinions, or a post-argument request for supplemental briefing, can lengthen the time needed to issue a decision.

In the most recent term, the departures of Justices Himonas and Lee increased the importance of the court’s docket-clearing practice. The Utah Supreme Court was clearly focused on issuing opinions in all cases in which the two justices had participated in oral argument and on ensuring that any matters ripe for adjudication from a prior term were not held over to the court’s next term.

In this effort, the court was quite successful. By late October 2022, only a handful of matters ripe for decision from the prior term had not yet been adjudicated — i.e., only a few cases fully briefed and argued prior to June 2022 were still awaiting a decision. None of those matters had been in that posture for an excessively long time; each had been argued within the last six to eight months. Thus, as of late October 2022, the Utah Supreme Court was fairly up to date on its caseload.

Looking at the court’s docket more broadly, in addition to the few matters argued prior to June 2022 that are still awaiting a decision, there are forty-five to fifty additional cases currently pending. Some have been argued in the court’s new term, i.e., in the fall of 2022. But most matters on the court’s docket are not yet ripe for decision, either because they have not yet been fully briefed, have not yet been argued, are awaiting supplemental briefing, or have been stayed, etc. But as these cases move through the pipeline and are eventually submitted for adjudication, the court will be ready to address them.

**UTAH SUPREME COURT 2023: SPECIFIC ISSUES**

Following is a summary of several significant cases and issues currently on the Utah Supreme Court’s docket, as well as information regarding the status of each case. Matters fully briefed by spring 2023 are most likely to be decided this term. But the later a matter is briefed and argued, the greater the likelihood it will not be decided until the following term.

**Administrative Proceedings**


The Utah Supreme Court retained jurisdiction over this proceeding, which challenges the rate used by Rocky Mountain Power when crediting its customers for the solar energy they generate. In the petitioner’s view, that rate is unreasonably low.

The petitioner challenges a Public Service Commission (Commission) order addressing the rate at issue. The petitioner argues that the Commission improperly set the rate without undertaking a cost-benefit analysis as to whether the credit rate should be based on the market rate for electricity. The petitioner raises other challenges as well, including a claim that the Commission erroneously set the credit rate without considering the societal and environmental benefits of customer-generated solar power. The Utah Supreme Court’s jurisdiction to hear these challenges is also at issue; the question is whether the order on which the petitioner has sought review constitutes final agency action on these matters.

This case was argued before the Utah Supreme Court in
September 2022. By late November 2022, when this article was submitted for publication, the Utah Supreme Court had not yet issued its decision.

**Taxation of Airline Property.** *Salt Lake County v. Utah State Tax Commission*, No. 20210938, on Review of Administrative Decision.

The Utah Supreme Court agreed to retain jurisdiction over this proceeding, in which Salt Lake County challenges the Utah State Tax Commission’s application of Utah Code Section 59-2-201(4) when assessing the property of Delta Airlines, Inc.

According to Salt Lake County, section 201(4) provides a discount when valuing airline property, and imposes a relatively high evidentiary standard for assessing the property’s value, creating an assessment process that is more favorable to the airline industry than applies to other industries and taxpayers. Salt Lake County asserts that this difference in treatment renders section 201(4) unconstitutional. Article XIII, section 2 of the Utah Constitution provides that “all tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be . . . assessed at a uniform and equal rate in proportion to its fair market value . . . and . . . taxed at a uniform and equal rate.”

The briefing in this matter is likely to be completed early in 2023.


The Utah Supreme Court retained jurisdiction over this proceeding, in which Larry H. Miller Theaters, Inc., along with several other entities, contests a decision of the Utah State Tax Commission construing Utah Code Section 59-2-1004.6. The petitioners challenge the Tax Commission’s construction of section 59-2-1004.6, which addresses “tax relief for decrease in fair market value due to access interruption.” The petitioners claim that the COVID-19 pandemic created “access interruption” to their properties for purposes of section 1004.6. The Tax Commission disagreed, construing “access interruption” to include only situations in which physical access to taxpayer property is impeded. Petitioners are thus asking the Utah Supreme Court to hold that the COVID-19 pandemic resulted in “access interruption” to their properties for purposes of section 1004.6.

The briefing in this matter is likely to be completed early in 2023.

**Criminal Proceedings**


This appeal centers on Utah Code Sections 76-7a-101 to -301, which comprise Utah’s “trigger law.” These provisions prohibit abortion except under limited circumstances.

The trigger law’s effective date was contingent on a change in United States Supreme Court case law. After the Supreme Court issued its decision in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), Utah’s legislative general counsel certified that the requisite change in law had occurred – i.e., that a binding court ruling had been issued providing that a state may prohibit abortion consistent with the trigger law’s provisions – and the law went into effect.

Immediately thereafter, Planned Parenthood Association of Utah (PPAU) filed a complaint challenging the trigger law as unconstitutional under several provisions of the Utah Constitution. The district court granted a preliminary injunction, which bars enforcement of the legislation pending resolution of the litigation.

The State petitioned the Utah Supreme Court for relief, requesting: (1) permission to immediately appeal the preliminary injunction, and (2) a stay of the preliminary injunction pending resolution of the appeal. The Utah Supreme Court granted permission to immediately appeal the injunction but denied the motion to stay, allowing the injunction to remain in place while the appeal is adjudicated.

The State’s petition for relief outlined the arguments it will likely make on appeal. Those arguments include a jurisdictional challenge, alleging PPAU lacks standing to bring this litigation. The State also plans to assert that the Utah Constitution does not contain a right to abortion and there was no showing of harm sufficient to warrant entry of a preliminary injunction.

The briefing in this matter is likely to be completed early in 2023.

**Constitutionality of the Plea Withdrawal Statute.** *State v. Rippey*, No. 20200917, on Direct Appeal.

The Utah Supreme Court recalled this appeal from the Utah Court of Appeals. The appeal presents a challenge to the constitutionality of Utah Code Section 77-13-6 (the Plea Withdrawal Statute).
The defendant argues the Plea Withdrawal Statute is facially unconstitutional and unconstitutional as applied to him. The defendant asserts the Plea Withdrawal Statute, in conjunction with the Post-Conviction Remedies Act, Utah Code Sections 78B-9-101 to -503, requires criminal defendants who plead guilty, and who do not raise all challenges available to them in a motion to withdraw the plea prior to sentencing, to pursue review of their challenges through the postconviction process. Under this statutory framework, a defendant who pleads guilty cannot raise his or her claims through the traditional appellate review process.

The defendant thus argues that the Plea Withdrawal Statute violates the right to appeal with the effective assistance of counsel. The defendant also asserts that the Plea Withdrawal Statute is an unconstitutional legislative exercise of the Utah Supreme Court’s rulemaking authority. An amicus brief has been filed in support of the appeal by the Utah Indigent Appellate Defense Division.

The briefing in this matter is likely to be completed early in 2023.

Constitutionality of Life Without Parole for a Juvenile Offender. State v. Mullins, No. 2020149, on Direct Appeal.

The Utah Supreme Court retained jurisdiction over this appeal, which contests the constitutionality of a sentence of life without the possibility of parole when the underlying offense was committed by an intellectually disabled teenager.

The appellant was sentenced to life without the possibility of parole before the United States Supreme Court issued its decision in Miller v. Alabama, 567 U.S. 460 (2012). In Miller, the Court held that the Eighth Amendment’s prohibition on cruel and unusual punishment precludes a mandatory sentence of life without parole for those under the age of 18 at the time of the offense. Id. at 465. The Court also indicated that it will be the uncommon case in which such a severe sentence would be appropriate. Id. at 479.

Following Miller, the appellant moved under Utah Rule of Criminal Procedure 22(e) to withdraw his guilty plea and/or correct an illegal sentence, arguing in part that the district court had not taken into account the circumstances pertaining to his life, age, and possibility for rehabilitation. The motion was denied.

On appeal, the appellant argues his sentence is unconstitutional and should be corrected under Rule 22(e). The appellant raises challenges under the Sixth and Eighth Amendments of the federal constitution, but also argues his sentence violates article 1, section 9, of the Utah Constitution. The appellant also asserts, among other things, that Utah Code Section 76-3-207 is unconstitutionally vague for lack of guidance on when a sentence of life without parole is “appropriate.” Under section 207, “[t]he penalty of life in prison without parole shall only be imposed if the jury determines that the sentence of life in prison without parole is appropriate.” Utah Code § 76-3-207(5)(c).

The briefing in this matter is likely to be completed early in 2023.

Refusal to Provide Phone Passcode to Law Enforcement Officers. State v. Valdez, No. 20210175, on Certiorari.

This proceeding raises several questions regarding a defendant’s refusal to provide the passcode to his phone to law enforcement officers. The Utah Supreme Court granted certiorari to address “[w]hether the court of appeals erred in concluding that [the State’s] elicitation and use of testimony about [the defendant’s] refusal to provide a code for his phone constituted an impermissible commentary on an exercise of a decision to remain silent.”

On certiorari, the parties focused their briefing on whether the defendant had a Fifth Amendment right to refuse to provide the passcode to his phone. But the Utah Supreme Court had granted certiorari to address, not whether such a right exists, but whether the State was permitted to comment on the refusal at trial. The court thus called for supplemental briefing. The parties were instructed to address the question on which certiorari was granted. The parties were also asked to address how the analysis is affected, if at all, by the defendant’s presentation of evidence at trial about text messages that may have been located on his phone.

An amicus brief was filed by the American Civil Liberties Union, the American Civil Liberties Union of Utah, and the Electronic Frontier Foundation in support of the defendant. An amicus brief was also filed by the National Association of Criminal Defense Lawyers, asserting that the Fifth Amendment prohibits the State from using the defendant’s refusal to provide his passcode as evidence of guilt.

The supplemental briefing in this matter is scheduled to be completed early in 2023.

The Utah Court of Appeals granted the State’s petition for permission to appeal from an interlocutory order and then certified the matter to the Utah Supreme Court for original appellate review.

In its appeal, the State cites Article I, Section 8, of the Utah Constitution, which provides that “all persons charged with a crime shall be bailable except ... persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the new felony charge ....” The State argues that, under this provision, a court has no discretion to grant bail in the specified circumstances – when a person is charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, and when there is substantial evidence to support the new felony charge.

The State argues that the district court erroneously granted bail to the defendant under these circumstances. The State also claims that this instance of granting bail despite the constitutional language is not unique. According to the State, some district court judges view the constitutional language as granting discretion to grant bail in felony-on-felony cases, while others have construed the language as prohibiting a grant of bail in the specified circumstances.

The briefing in this matter is likely to be completed early in 2023.

**Jury Unanimity/Access to Therapy Records. State v. Chadwick, No. 20190818, on Direct Appeal.**

The Utah Court of Appeals certified this appeal to the Utah Supreme Court for original appellate review. On appeal, the defendant challenges his conviction for sexual abuse of a child, raising two overarching issues.

The first issue centers on the confidential therapy records of the person who testified that, as a child, she was sexually abused by the defendant. During the proceeding below, the district court reviewed the therapy records in camera and determined what information, if any, would be released to the defendant. On appeal, the defendant argues he must have access to the complete record, including the currently sealed therapy records. The defendant also argues that, if he is not given such access and the Utah Supreme Court conducts its own in camera review, the court should determine that the district court erred in failing to provide him with evidence in the therapy records to which he was constitutionally entitled, and the error warrants reversal of his conviction.

The second issue involves the requirement of jury unanimity. The defendant was charged with four identical counts of sexual abuse of a child, distinct in their nature and time of occurrence. But the jury was not instructed that their verdict on each count must be unanimous or that they must agree on the conduct that constituted the offense in each count. The defendant argues that, to the contrary, the jury instructions suggested otherwise. The jury returned a guilty verdict on one count and acquitted the defendant on the remaining three counts. The defendant thus argues that his right to a unanimous verdict was denied.

The briefing in Chadwick is likely to be completed early in 2023.

Yet another matter raising the issue of jury unanimity is State v. Baugh, No. 20220272, in which the Utah Supreme Court granted the State’s petition for a writ of certiorari. The briefing in Baugh is likely to be completed in late spring or summer 2023.

**Access to Video Recordings During Jury Deliberations. State v. Centeno, No. 20200875, on Direct Appeal.**

The Utah Supreme Court agreed to retain jurisdiction over this direct appeal in which the defendant challenges his convictions. The defendant raises three primary claims.

First, the defendant argues the jury should not have been given access, during deliberations, to a video recording of the defendant being interviewed by law enforcement officers. The defendant asserts the video is a testimonial exhibit and should only have been viewed in open court. Allowing the jury to view the video during deliberations, he argues, violated his constitutional right to be present at trial.

Second, the defendant argues his counsel was constitutionally deficient. The defendant points to counsel’s failure to object when an additional video recording was given to the jury for use during deliberations. The video contained an interview of the person who testified that the offense was committed against her, which interview had not been played for the jury during the trial.

Finally, the defendant argues the district court should have declared a mistrial after a witness answered a few questions but then became emotionally unable to continue. The witness was dismissed and did not return. Given the defendant’s inability to
cross-examine the witness, he requested a mistrial, but his motion was denied.

The briefing in this matter is likely to be completed early in 2023.

**Substantial Step/Entrapment in Attempt Offenses.** *State v. Smith*, No. 20220768, on Certiorari.

The Utah Supreme Court granted the defendant’s petition for a writ of certiorari, which asserts that his convictions for attempt crimes involving a minor should be overturned.

The defendant was on a dating application when he encountered a profile of someone who appeared to be an adult woman. But the profile was a pretense, in use by a law enforcement officer. The defendant engaged in a chat with the officer, in which the officer stated that he was a minor, talked about engaging in sexual activity with the defendant, and arranged to meet the defendant. When the defendant arrived at the specified location, he was arrested.

The defendant was subsequently convicted of attempted child kidnapping and other offenses involving attempted sexual activity with a minor. The Utah Court of Appeals affirmed.

In his petition seeking certiorari, the defendant argued that arriving at the specified locale did not constitute a “substantial step” for purposes of the attempt offenses. According to the defendant, physical proximity, coupled with solicitation, is insufficient. The defendant also challenged the Court of Appeals’ application of Utah Code Section 76-2-303, which addresses the defense of entrapment. The defendant argues that the Court of Appeals should have concluded, under section 303, that he was manipulated into the activity at issue by the law enforcement officer.

The briefing in this matter is likely to be completed in late spring or summer 2023.


In this appeal, which falls within the Utah Supreme Court’s exclusive jurisdiction, the defendant raises several challenges to his conviction for aggravated murder, a capital offense.

First, the defendant argues the district court improperly allowed Weber County to interfere in decisions regarding the funding of his defense. The defendant focuses on Weber County’s cap on the funds available for a mitigation investigation, which the defendant claims is a small fraction of the funds typically spent by Utah counties on mitigation investigations in capital cases. The defendant also asserts, among other challenges, that his counsel was ineffective and that statements from his prior sentencing proceeding should not have been introduced at trial.

The briefing in this matter is likely to be completed early in 2023.


The petitioner was convicted of multiple counts of aggravated sexual abuse of a child. A few years later, the child who had testified of the abuse (Child) recanted the allegations. Child sent a letter to the Utah Board of Pardons and Parole stating that the petitioner was innocent of the crimes for which she had been convicted.

The petitioner sought a postconviction determination of her factual innocence under Utah Code Section 78B-9-402 and Utah Rule of Civil Procedure 65C. The district court held a hearing, in which Child (who had recently reached the age of adulthood) testified consistent with the statements in his letter to the parole board. The district court denied the petition, reasoning that Child’s testimony did not provide clear and convincing evidence of factual innocence because of Child’s history of speaking falsely.

The petitioner appealed, and the Utah Supreme Court retained jurisdiction over the matter. The petitioner argues the district court erred in concluding that a witness who lied in the past cannot or did not provide clear and convincing evidence of factual innocence. The State argues recantation evidence should be viewed with skepticism and is inherently unreliable, and the district court properly concluded Child’s testimony was insufficient to establish factual innocence by clear and convincing evidence.

The briefing in this matter was scheduled to be completed in late 2022.

**Constitutionality of the Post-Conviction Remedies Act.** *Kell v. Benzon*, No. 20180788, on Direct Appeal.

The Utah Supreme Court has exclusive jurisdiction over this appeal, which involves a challenge to the legality of a death sentence. The petitioner argues that his petition for postconviction relief was wrongly dismissed.
The district court dismissed the petition on procedural grounds. On appeal, the petitioner requested that his procedural noncompliance be excused under an “egregious injustice” exception to the Post-Conviction Remedies Act (PCRA). He also asked that the court exercise its traditional authority over collateral proceedings to grant the relief he sought.

But while the appeal was pending, the Utah Supreme Court issued its decision in *Patterson v. State*, 2021 UT 52, 504 P.3d 92. In *Patterson*, the court explained that it has not included an egregious injustice exception in its rules governing the exercise of the court’s writ power; and as a result, the court may only hear a case otherwise barred by the PCRA when failure to do so would violate the petitioner’s constitutional rights. *Id.* ¶¶ 170–94.

The court thus asked the parties to provide supplemental briefing addressing whether violation of constitutional rights is at issue here. The parties were asked to address: (1) whether the procedural bar at issue in this proceeding is unconstitutional under the Utah Constitution and, if so, whether that challenge was preserved; and (2) whether the timing of the petition (which was not filed until several years after the petitioner discovered the facts upon which it is based) adversely affects the petitioner’s ability to obtain relief under the court’s constitutional writ power.

The supplemental briefing was scheduled to be completed in December 2022.

**Civil Proceedings**

**Constitutional Easement for Enjoyment of Public Waters.** *Utah Stream Access Coalition v. VR Acquisitions, LLC*, No. 20151048, on Direct Appeal.

The Utah Supreme Court retained jurisdiction over this appeal, in which the appellant claims a constitutional right to incidentally touch privately owned beds of state waters as reasonably necessary to exercise public recreation rights in those waters.

The issue on appeal is whether the historical record supports the appellant’s constitutional claim. The district court concluded it did not. In its summary judgment ruling, the district court held that the historical record did not demonstrate a public easement to touch private land while engaged in the recreational use of public waters, based on the law of easements as it existed at the time of the framing of the Utah Constitution.

This appeal followed, challenging the district court’s conclusion.


The Utah Court of Appeals certified this appeal to the Utah Supreme Court for original appellate review. At issue is a provision in a divorce decree, which bars Mother and Father from encouraging their children “to adopt the teachings of any religion or be baptized into any religion without the consent of the legal guardian.” Mother is the children’s legal guardian. Father thus brought this appeal.

Mother and Father were raised in the Kingston Group, married at ages sixteen and twenty-one, respectively, and have four children. Father remains an adherent of the Kingston Group’s beliefs and practices. Mother does not share Father’s beliefs and does not wish their children to be exposed to the Kingston Group’s beliefs and practices.

On appeal, Father argues that the prohibition in the divorce decree violates his fundamental rights as a parent as well as his free speech and free exercise rights. Father does not appear to be raising challenges based on provisions of the Utah Constitution; he seems to be grounding his arguments in federal constitutional law.

This matter was argued before the Utah Supreme Court in April 2022. By late November 2022, when this article was submitted for publication, the Utah Supreme Court had not yet issued its decision.

**Reformulation of Respondeat Superior Liability.** *Burton v. Chen*, No. 20210873, on Interlocutory Appeal.

The Utah Supreme Court retained jurisdiction over this matter and granted the petition for interlocutory appeal, which raises questions regarding liability for employee misconduct.

The doctrine of *respondeat superior* is an agency-based theory of liability under which responsibility for the torts of an agent may be imposed on the principal. A few years ago, the Utah Supreme Court characterized its approach to this doctrine as a bit outdated. *M.J. v. Wisan*, 2016 UT 13, ¶ 55, 371 P.3d 21. The court suggested the possibility of revising its approach in a future case. *Id.* ¶ 66. The appellant in this case thus asks the
court to adopt an alternative approach, i.e., a foreseeability test, when determining *respondeat superior* liability.

The appellant also asserts, among other things, that liability exists under the Utah Physician Assistant Act (UPAA), Utah Code Sections 58-70a-101 to -507. According to the appellant, the UPAA imposes statutory responsibility upon a supervising physician for the professional practice and conduct of the physician assistant (PA) he supervises. And if the supervising physician does not define the scope of the PA’s authority, in a written agreement, the physician cannot later claim that the PA’s misconduct is outside the scope of that authority.

Briefing in this matter was completed in November 2022.

**Apparent Authority/Partnership by Estoppel.** *Wittingham, LLC v. TNE Ltd. P’ship*, No. 20210677, on Direct Appeal.

The Utah Supreme Court retained jurisdiction over this matter, which raises questions regarding apparent authority and partnership by estoppel.

A partnership obtained a loan from the defendant. It was later discovered that, before the loan was made, the partnership had been administratively dissolved. A member of the partnership then sued, among other things, to void the trust deed that secured the loan. The district court ruled in the partnership’s favor, allowing it to void the trust deed. The defendant appealed, raising three challenges.

First, the defendant argues the general partner who entered into the transaction on behalf of the partnership had apparent authority to do so. Second, the defendant argues the partnership is estopped from challenging the validity of the trust deed, having represented that the general partner had authority to enter into the transaction. Third, the defendant argues that even if the trust deed were voidable at the election of the injured party, the partnership was not harmed by the transaction and had no standing to void it.

The briefing in this matter was scheduled to be completed in December 2022.