IN THE UTAH COURT OF APPEALS

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Amber Klein, Plaintiff and Appellant, v. Marysvale Town, Defendant and Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090490-CA F I L E D (October 21, 2010) 2010 UT App 293

Sixth District, Junction Department, 070600008
The Honorable Paul D. Lyman

Attorneys: Timothy W. Blackburn and Richard H. Reeve, Ogden, for Appellant
David L. Church, Salt Lake City, for Appellee

Before Judges Thorne, Voros, and Roth.

VOROS, Judge:

Plaintiff Amber Klein was injured in 2006 when the ATV on which she was riding hit a barbed wire gate on property owned by Marysvale Town. On appeal, she challenges the trial court's ruling on summary judgment that Marysvale (1) owed her no duty of care under the Limitation of Landowner Liability Act (the Landowner Liability Act), see Utah Code Ann. §§ 57-14-1 to -6 (2000 & Supp. 2010) and (2) was immune from liability under the Off-Highway Vehicle Act, see Utah Code Ann. §§ 41-22-1 to -36 (2005 & Supp. 2010). Because the trial court ruled that Klein's claim is independently defeated by each of the two acts, to win reversal on appeal, Klein must establish that neither act bars her claim.

The Landowner Liability Act states that "an owner of land owes no duty of care to keep the premises safe for entry or use by any person entering or using the premises for any recreational purpose or to give any warning of a dangerous condition, use, structure, or activity on those premises to that person." Utah Code Ann. § 57-14-3 (2000). "[U]sing off-highway vehicles or recreational vehicles" is specifically classified as a "[r]ecreational purpose" by Utah Code section 57-14-2. See id. § 57-14-2(3)(p) (Supp. 2010).

Despite the categorical language of section 57-14-3, Klein repeatedly asserts in her brief that the Landowner Liability Act applies only if the well-worn trail on which she was riding was "open" for recreational use. Klein cites no cases in support of this assertion.[1] Yet the Utah Supreme Court has examined the reach of this statute on multiple occasions. Like the courts of many states with similar acts, it has repeatedly held that the spare statutory language must be limited by context and legislative intent. See generally De Baritault v. Salt Lake City Corp., 913 P.2d 743 (Utah 1996) (holding the act inapplicable to a small, urban park inappropriate for the type of activities listed in the statute); Jerz v. Salt Lake Cnty., 822 P.2d 770 (Utah 1991) (holding the act inapplicable to canyon roads on the county road system); Crawford v. Tilley, 780 P.2d 1248 (Utah 1989) (holding the act inapplicable to a locked cabin in a locked, gated community).

Cases in Utah and other jurisdictions with similar acts do not focus solely on whether the land in question was "open." Rather, they have found various characteristics of the land relevant to the question of whether a recreational use statute applies:

> [I]n Utah and in other jurisdictions, the courts which have focused on the land itself have found some combination of the following characteristics prerequisite to immunity under the recreational use statutes: (1) rural, (2) undeveloped, (3) appropriate for the type of activities listed in the statute, (4) open to the general public without charge, and (5) a type of land that would have been opened in response to the statute.

De Baritault, 913 P.2d at 748.

Other than a passing reference to Jerz v. Salt Lake County, 822 P.2d 770 (Utah 1991), in Marysvale's brief, neither party cites these controlling cases, and neither analyzes any of the enumerated factors except openness. An adequately briefed argument "contain[s] the contentions and reasons of the appellant with respect to the issues presented, . . . with citations to the authorities, statutes, and parts of the record relied on." Utah R. App. P. 24(a)(9). "'Implicitly, rule 24(a)(9) requires not just bald citation to authority but development of that authority and reasoned analysis based on that authority.'" State v. Green,

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[1]The only two cases cited in her brief both address the standard of review in summary judgment cases.

2004 UT 76, ¶ 13, 99 P.3d 820 (quoting State v. Thomas, 961 P.2d 299, 305 (Utah 1998)). A reviewing court "'is not simply a depository in which the appealing party may dump the burden of argument and research.'" State v. Bishop, 753 P.2d 439, 450 (Utah 1988) (quoting Williamson v. Opsahl, 416 N.E.2d 783, 784 (Ill. App. Ct. 1981)). Accordingly, "we may refuse, sua sponte, to consider inadequately briefed issues." State v. Lee, 2006 UT 5, ¶ 22, 128 P.3d 1179.

We do so here. The Landowner Liability Act is an important and far-reaching act. Were we to uphold its applicability in this case, our decision would be the first appellate court decision in Utah to do so.[2] We reluctantly decline to proceed absent adequate briefing. "An appellant must do the heavy lifting because the law otherwise presumes that all was well below. An appellate court that does the lifting for an appellant distorts this fundamental allocation of benefits and burdens." State v. Robison, 2006 UT 65, ¶ 21, 147 P.3d 448.

To prevail on appeal, Klein must demonstrate that neither the Landowner Liability Act nor the Off-Highway Vehicle Act applies. Because we decline to entertain her challenge to the former, we affirm.

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J. Frederic Voros Jr., Judge

WE CONCUR:

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William A. Thorne Jr., Judge

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Stephen L. Roth, Judge

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[2]We intend no implication that the trial court erred. On the contrary, Klein tacitly concedes that the land in question bears four of the five characteristics typical of land covered by the Landowner Liability Act: it is rural, it is undeveloped, it is appropriate for the type of activities listed in the statute, and it is the type of land that would have been opened in response to the statute. The only even debatable factor is whether it is open to the public.