

1986

Robert L. Gleave v. The Denver and Rio Grande
Western Railroad company, a corporaiton, Utah
Railway Company, a corporation : Unknown

Utah Court of Appeals

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E. Scott Savage, Michael R. Richman, Patrick J. O'Hara; Van Cott, Bagley, Cornwall & McCarthy; Paul M. Warner; assistant attorney general; attorneys for defendants.

Robert J. Debry; attorney for appellant.

Recommended Citation

Legal Brief, *Gleave v. The Denver and Rio Grande*, No. 860057 (Utah Court of Appeals, 1986).
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DOCKET NO. 860057

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COURT OF APPEALS

IN THE SUPREME COURT
OF THE STATE OF UTAH

ROBERT L. GLEAVE,)
)
Plaintiff-Respondent)
and Cross-Appellant,)
)
vs.)
)
THE DENVER AND RIO GRANDE)
WESTERN RAILROAD COMPANY,)
a corporation, UTAH RAILWAY)
COMPANY, a corporation,)
)
Defendants-Appellants)
and Cross-Respondents)
)
and)
)
THE STATE OF UTAH,)
DEPARTMENT OF)
TRANSPORTATION,)

(Case No. 20166)
(Case No. 20300)

Consolidated Case No. 20166

AFFIDAVIT IN SUPPORT OF RESPONSE BY
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
TO PLAINTIFF'S SIXTH MEMORANDUM OF
NEWLY UNCOVERED AUTHORITY

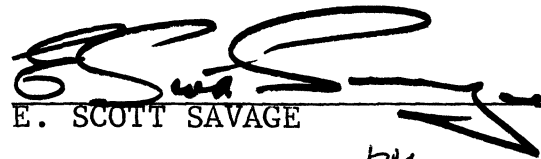
Being first duly sworn, the undersigned, E. Scott
Savage, hereby deposes and says as follows:

I am an attorney licensed to practice law in the State
of Utah and a shareholder in the law firm of Van Cott, Bagley,

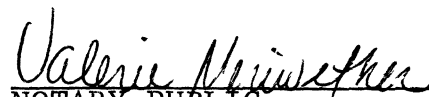
Cornwall & McCarthy. Van Cott, Bagley, Cornwall & McCarthy was council of record and I was lead counsel for The Denver and Rio Grande Western Railroad Company in the case of Wilde v. Denver and Rio Grande Western Railroad Company , C-83-149J, which was an action tried before the Honorable Bruce S. Jenkins in the United States District Court for the District of Utah, Central Division.

At the close of the evidence in the aforementioned case, Judge Jenkins presented his jury instructions to counsel for the parties. Attached to this Affidavit as Exhibit "A" is a true and correct copy of one of those jury instructions. The case was settled before the instructions actually were given.

DATED this 13th day of January, 1987.


E. SCOTT SAVAGE

SUBSCRIBED AND SWORN to before me this 13th day of January, 1987.


NOTARY PUBLIC
Residing at: Salt Lake County, UT

My Commission Expires:

April 25, 1987

8259S

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the within and foregoing Affidavit In Support Of Response By The Denver And Rio Grande Western Railroad Company To Plaintiff's Sixth Memorandum Of Newly Uncovered Authority to be mailed this 13th day of January, 1987, to the following:

Robert J. DeBry
Attorney for Plaintiff-Respondent and
Cross-Appellant
4254 South 700 East
Salt Lake City, Utah 84107

Paul M. Warner, Esq.
Assistant Attorney General for the
State of Utah
Attorney for Defendant-Respondent
Utah Department of Transportation
236 State Capitol Building
Salt Lake City, Utah 84114

Patricia J. O'Hara

JURY INSTRUCTION NO. _____

THE UTAH DEPARTMENT OF TRANSPORTATION HAS THE EXCLUSIVE RESPONSIBILITY AND DUTY TO ESTABLISH AND LOCATE SAFETY APPLIANCES, SIGNALS OR DEVICES AT RAILROAD GRADE CROSSINGS IN UTAH. THEREFORE, YOU MAY NOT FIND THE RAILROAD NEGLIGENT FOR FAILING TO INSTALL ADDITIONAL WARNING DEVICES AT THIS CROSSING. HOWEVER, YOU MAY FIND THE RAILROAD NEGLIGENT FOR FAILING TO TAKE PRECAUTIONS WITHIN ITS CONTROL THAT A REASONABLY PRUDENT PERSON IN THE SAME CIRCUMSTANCES WOULD TAKE TO AVOID INJURING THE PUBLIC.

EXHIBIT "A"