

2001

# Joseph R. Bagnall, and Florence Bagnall v. Suburbia Land Company : Response to Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

J. R. BAGNALL, aka JOSEPH  
BAGNALL, and FLORENCE BAGNALL,

Plaintiffs and  
Respondents,

vs.

SUBURBIA LAND COMPANY, an  
Idaho corporation, et al.,

Defendants and  
Counter-Appel-  
lants.

Case No. 13,753

REPLY TO PETITION FOR REHEARING

APPEAL FROM JUDGMENT OF THE SIXTH JUDICIAL DISTRICT  
COURT OF SANPETE COUNTY, STATE OF UTAH  
HONORABLE MAURICE HARDING, JUDGE

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Clerk, Supreme Court, Utah

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| 5 | <u>Am.Jur.2d</u> , Appeal and Error, §988. | 2 |

IN THE SUPREME COURT  
OF THE STATE OF UTAH

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J. R. BAGNALL, aka JOSEPH	)	
BAGNALL, and FLORENCE BAGNALL,	:	
	)	
Plaintiffs and	:	
Respondents,	)	
	:	
vs.	)	Case No. 13,753
	:	
SUBURBIA LAND COMPANY, an	)	
Idaho corporation, et al.,	:	
	)	
Defendants and	:	
Counter-Appel-	)	
lants.	:	

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REPLY TO PETITION FOR REHEARING

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ARGUMENT ON APPEAL

Appellants, Suburbia Land Company, et al., seek a rehearing of the decision rendered by this Court on October 31, 1975, wherein this Court affirmed the decision of the trial court which granted judgment in favor of plaintiffs and against defendants forfeiting the real estate agreement and quieting title in the plaintiffs, except for an undivided one-half interest in 140.15 acres, which the Court, by Summary Judgment and Decree of Quiet Title awarded to the defendant, United Paint and Color. Plaintiffs' appeal from the Summary Judgment is presently pending before this Court.

POINT I

LONG STANDING PRECEDENT AND SOUND POLICY DICTATE THAT A REHEARING SHOULD NOT BE GRANTED FOR THE PURPOSE OF REARGUING THE SAME QUESTIONS THAT WERE BRIEFED AND ARGUED ON APPEAL.

It is a well settled rule that a rehearing under Rule 76(e)(1), Utah Rules of Civil Procedure, should not be granted merely for

purposes of rearguing matters that already have been briefed and argued to the Court. Such a policy was clearly enunciated by this Court as early as 1886 in Ducheneau v. House, 4 Utah 483, 11 P. 618, and Jones v. House, 4 Utah 484, 11 P. 619. The reasons for this rule are clearly set forth in Cummings v. Nielson, 42 Utah 157, 129 P. 619 (1912) at 624, wherein the Court states:

In this case nothing was done or attempted by counsel, except to reargue the very propositions we had fully considered and decided. If we should write opinions on all the petitions for rehearing filed, we would have to devote a very large portion of our time in answering counsel's contentions a second time; and, if we should grant rehearings because they are demanded, we should do nothing else save to write and rewrite opinions in a few cases.

All litigation must have an end. Unless there is obvious error, and not merely a petitioner's disagreement or dissatisfaction with the Court's opinion, rehearings are not to be granted. Virtually all of the courts in this country strictly follow such a rule. See, e.g., Climate Control, Inc. v. Hill, 87 Ariz. 201, 349 P.2d 771 (1960); Federal Land Bank of Wichita v. Ludwig, 158 Kan. 275, 146 P.2d 656 (1944); Wilson v. Rowan Drilling Co., 55 N.M. 81, 227 P.2d 365 (1950). See also 5 Am.Jur.2d Appeal and Error, §988.

Appellants' raise six factual questions in Point III of their petition, claiming that these six issues "are basically matters of law applied to uncontroverted fact." The writer will not attack each of these issues in this brief, for this has already been done in Points I-VI of respondents' appellate brief. Suffice it to say that the petitioners' contention that these six points are questions of "law as applied to uncontroverted fact" is totally without merit. All six propositions are grounded almost entirely in factual questions that are heatedly disputed by all

sides. These disputations of fact have already been fully briefed and argued to this Court; the total number of pages in the briefs of both sides covering these six propositions is in excess of seventy pages. Petitioners' bring forth no controlling case law heretofore overlooked, nor any newly discovered evidence not available until the present; they simply are asking the court to indulge them in a reargument of their previously asserted contentions. Such is not grounds for a rehearing.

Point IV of petitioners' brief, while a matter of procedure and not a question of fact, has also been fully briefed and argued by both sides, and nothing new has been offered for the consideration of this court. Point IV of appellants' petition, like their Point III discussed above, is merely a request to reargue a question that the court has already heard and passed upon.

Petitioners' contentions, in Points I and II of their brief, that the Court did not carefully consider the state of the record on appeal and the resulting unreferenced self-serving statements, is completely without substance. The appellants' chose to selectively designate only those portions of the trial transcript and exhibits which were favorable to their position on appeal. The sorry state of the record, and the unreferenced self-serving statements, were closely scrutinized by the Court, and became the basis of the Courts written decision. The Court, in its opinion, stated:

As a result we have before us briefs of both sides loaded with unreferenced, self-serving statements of facts and contentions, with an apparent invitation that we perform their procedural obligations and conduct their research. We cannot indulge them such luxury

under the circumstances here. This court, therefore, under elementary principles anent appellate review, in this particular case will presume the findings of the court to have been supported by admissible, competent, substantial evidence - to any criticism of which, by any litigants, the court feels constrained to turn a deafened ear.

Respondents' appellate brief includes several pages showing which relevant and necessary parts of the record were selectively ignored by the appellants, including the direct and re-direct examination of J. R. Bagnall, the direct examination of Don V. Tibbs and all of the cross-examination of Reed R. Maxfield. (See respondents' brief Point X for further elaboration on this point). But this is not the time nor the place to reargue these points, as this was fully done on appeal; and the serious consideration which the Court gave to these arguments, as evidenced by the above quotation from its opinion, precludes the necessity of rearguing the same points once again.

Appellants' brief and petition for rehearing is merely a re-argument of the propositions briefed and argued on appeal, and, therefore, the petition should be denied.

#### POINT II

THE COURT DID NOT ERR IN BASING ITS DECISION ON THE PRESUMPTION THAT THE FINDINGS OF THE TRIAL COURT WERE SUPPORTED BY ADMISSIBLE, COMPETENT AND SUBSTANTIAL EVIDENCE.

The appellants' failure to designate all relevant and necessary parts of the record further resulted in the Court's decision to "presume the findings of the [trial] court to have been supported by admissible, competent, substantial evidence. . . ." Appellants' burden on appeal was to show that the findings and conclusions of the trial court were in error. Since the actions



of the trial court are clothed with a presumption of validity, an appellate court should reverse the decision of the trial court only if the evidence clearly preponderates against the trial court's findings and judgment.

To sustain the burden of showing that the trial court's decision was in error, appellants are required to bring all the evidence relating to issues on appeal before the court, thus allowing the court to determine the weight and validity of the evidence presented at trial. This Court has repeatedly stated that failure to designate all of the pertinent record will result in a presumption that the evidence at trial was sufficient to support the verdict. James Manufacturing Company v. Wilson, 15 U.2d 210, 390 P.2d 127 (1964); Owyhee, Inc. v. Robbins Marco Polo, 17 U.2d 181, 407 P.2d 565 (1965); Bennett Leasing Company v. Ellison, 15 U.2d 72, 387 P.2d 246 (1963). The majority of courts in other jurisdictions follow this rule. 4 Am.Jur.2d, Appeal and Error, §526. The appellants, by failing to designate all of the necessary and pertinent parts of the record, cannot sustain the burden of showing that the trial court erred in its findings and judgment. As a result, this court properly presumed the trial court's finding to be supported by competent, admissible evidence, and the trial court's judgment was properly affirmed.

Finally, in Point V of petitioners' brief, they claim as a basis for rehearing, a right to have a written response to each of their contentions. As explained above, the Court considered all of the appellants' arguments, affirmed and adopted the trial court's findings, and wrote its decision based thereon. Thus, the findings of the trial court became the findings of the appel-

late court, and became the basis of the Court's written decision. This is the written answer that appellants are entitled to. This Court has written the answer once, and need not do it twice.

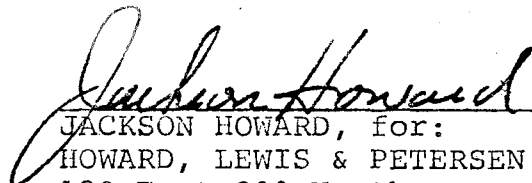
In any event, nothing in petitioners' Point V can be considered "new" or "obvious error" so that a rehearing should result.

#### CONCLUSION

Respondents respectfully submit that the Court should deny the Petition for Rehearing.

DATED at Provo, Utah, this 2nd day of February, 1976.

Respectfully submitted,

  
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MAILING CERTIFICATE

MAILED a copy of the foregoing Reply to Petition for Re-hearing to Robert L. Lord, Attorney for Defendants-Appellants, 118 Metro Building, Salt Lake City, Utah 84111, this 2<sup>nd</sup> day of February, 1976.

M. Shane Smith