

1978

Bryce C. Reynolds and LaDonna Reynolds v. Stewart Van Wagoner et al : Respondent's Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

BRYCE C. REYNOLDS and)
LaDONNA REYNOLDS, his wife,)

Plaintiffs-Appellants,)

vs.)

Case No. 15715

STEWART VAN WAGONER,)
Defendant.)

RICHLAND, INC.,)
Plaintiff in Intervention-Respondent,)

vs.)

BRYCE C. REYNOLDS and)
LaDONNA REYNOLDS, his wife;)
and SALT LAKE COUNTY,)

Defendants in Intervention-Appellants.)

RESPONDENT'S PETITION FOR REHEARING AND
BRIEF IN SUPPORT THEREOF

Appeal from Judgment of the Third Judicial District
Court of Salt Lake County, Honorable David K. Winder, Judge

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FILED

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Defendants in Intervention-Appellants.)

PETITION FOR REHEARING

Respondent respectfully prays the Court grant re-hearing solely on the point of respondent's entitlement to attorney's fees on appeal.

This petition is supported by a brief of the authorities relied upon to sustain the foregoing point.

DATED this th day of March, 1979.

Respectfully submitted,

MOYLE & DRAPER

By _____

Wayne G. Petty
Attorney for Respondent

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RESPONDENT'S BRIEF IN SUPPORT OF
PETITION FOR REHEARING

ARGUMENT

The Court's decision did not allow or deny respondent's request for attorney's fees on appeal.

Respondent requests an award of attorney's fees on appeal. This Court's decision did not address such request, neither allowing nor denying respondent's attorney's fees on appeal. Point IV of respondent's Brief on Appeal sets forth the request and the basis therefor, and is set forth herein in full.

POINT IV. RICHLAND SHOULD BE AWARDED ITS ATTORNEY'S FEES ON APPEAL.

The real estate contract provides:

21. The Buyer and Seller each agree that should they default in any of the covenants or agreements contained herein, that the defaulting party shall pay all costs and expenses, including a reasonable attorney's fees, which may arise or accrue from enforcing this agreement, or in obtaining possession of the premises covered hereby, or in pursuing any remedy provided hereunder or by the statutes of the State of Utah, whether such remedy is pursued by filing a suit or otherwise.

Reynolds have refused to accept the tender of Richland of the monies paid for taxes upon the real property. Richland submits that under all the circumstances and in view of Reynolds' action, Richland is entitled to attorney's fees as awarded at the trial court and on appeal. Attorney's fees on appeal are discretionary with the Supreme Court. Swain v. Salt Lake Real Estate and Investment Co., 3 U.2d 121, 279 P.2d 709 (1955); see also Bates v. Bates, 560 P.2d 706 (1977). Since responding to Reynolds' appeal has been necessary in enforcing the real estate contract, Richland submits that attorney's fees on appeal are proper. Attorney's fees on appeal should be granted in such amount to be determined by the trial court upon proper evidence.

CONCLUSION

Based upon the foregoing, respondent requests this Court to grant its attorney's fees on appeal, and remand the case to the district court solely for the purpose of determining the amount of such fees.

DATED this 12th day of March, 1979.

Respectfully submitted,

MOYLE & DRAPER

By _____
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600 Deseret Plaza
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of March, 1979, two true and correct copies of Petition for Rehearing and Brief in support thereof were mailed, postage prepaid, to the following counsel of record:

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