

1987

Florence J. Gillmor, Stephen T. Gillmor and
Charles F. Gillmor v. Edward Leslie Gillmor and
Gillmor Livestock Corporation : Brief in
Opposition to Certiorari

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

* * * * *

870486

FLORENCE J. GILLMOR, STEPHEN T.)
GILLMOR and CHARLES F. GILLMOR,)
Plaintiffs and Respondents,)

vs.)

EDWARD LESLIE GILLMOR and)
GILLMOR LIVESTOCK CORPORATION,)
Defendants and Appellants.)

(District Court No. C81-3875))

GILLMOR LIVESTOCK CORPORATION,)
a Utah Corporation,)
Plaintiff and Appellants,)

vs.)

STEPHEN T. GILLMOR, FLORENCE J.)
GILLMOR and CHARLES F. GILLMOR,)
Defendants and Respondents.)

(District Court No. C82-3490)

SUPREME COURT NO. ⁸⁷⁰⁴⁸⁶~~13583~~

COURT OF APPEALS
CASE NO. 860302-CA

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Appeal from the Judgment of the Third District Court
In and For Salt Lake County
Honorable J. Dennis Frederick, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Defendants and Respondents.)

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SUPREME COURT NO. 19683

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SUPREME COURT NO. 19683

COURT OF APPEALS
CASE NO. 860302-CA

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Respondents Florence J. Gillmor and Stephen T. Gillmor,
pursuant to Rule 47 of the Rules of the Utah Supreme Court,
hereby respond to the Petition for Writ of Certiorari filed by
appellants.

ARGUMENT

THE DECISION OF THE COURT OF APPEALS
PRESENTS NO SIGNIFICANT ISSUES WHICH MERIT
THE CONSIDERATION OF THIS COURT

In their Petition for Writ of Certiorari, appellants identify no less than eight issues raised by purported errors in the Court of Appeals opinion which demand the consideration of this Court. The number of issues alone suggests their insignificance.

Rule 43 of the Rules of the Utah Supreme Court provides that the Court will exercise its discretion to grant certiorari "only when there are special and important reasons therefor." While recognizing that the considerations set forth in Rule 43 are neither controlling nor complete, it is instructive to evaluate the issues identified by appellants in light of the four indicia there set forth.

First, there is no suggestion by appellants or otherwise that the decision creates a conflict among panels of the Utah Court of Appeals.

Second, there is no indication that the decision interprets state or federal law contrary to an interpretation on the same issue by this Court. Although appellants at page 12 of their petition argue that the Court of Appeals ignored a Supreme Court order, the argument does not raise an issue of substantive law and it incorrectly characterizes the nature of the Supreme Court's order and its treatment by the Court of Appeals. The order referred to is the Supreme Court's denial of respondents' motion to correct what respondents felt was a clerical error in

the record. The Supreme Court declined to make any correction at the time of the motion and issued an order denying the motion. The effect was to reserve a decision on that and other related issues until a full hearing on the appeal. That hearing was, of course, conducted by the Utah Court of Appeals and the issue of the clerical error was resolved by the Court of Appeals in a manner entirely consistent with the Supreme Court's previous order.

Third, although appellants are unhappy with the decision of the Court of Appeals, they did not go so far as to suggest that the lower court has "so far departed from the accepted and usual course of judicial proceedings" that the supervision of the Supreme Court is called for.

Finally, the issues raised by appellants certainly do not identify any important questions of federal or state law which must be settled by this Court. Rather, the issues revolve around evidentiary matters or routine questions of procedure.

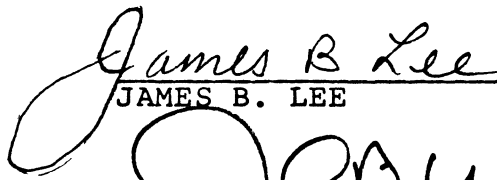
In short, the appellants are bringing before this Court the same issues they argued before the Utah Court of Appeals because they quarrel with the Court of Appeals' resolution of those issues. Respondents will not address specifically all of the issues raised because to do so would be time consuming and unproductive. Respondents' brief before the Court of Appeals contains their detailed responses to the various arguments. The issues are not significant for Supreme Court-level review. Appellants have been accorded a full and fair hearing. There is no reason for the Supreme Court to rehear this matter and to do

so would defeat the purpose for which the Utah Court of Appeals was created.

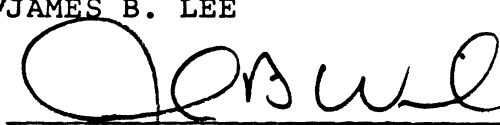
CONCLUSION

The petition presents no significant legal issues and would constitute nothing more than a rehearing by this Court of issues addressed to the Utah Court of Appeals. Respondents urge this Court to deny appellants' petition.

DATED this 15th day of January, 1988.



JAMES B. LEE



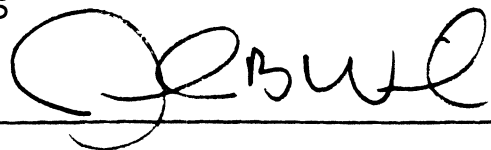
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MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, four (4) true and correct copies of the foregoing RESPONSE TO PETITION FOR WRIT OF CERTIORARI to the following on this 15th day of January, 1988:

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