

1987

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

PREM.

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-55.5
SC
DC

Florence J. Gillmor, Stephen)
T. Gillmor and Charles F.)
Gillmor,)

Plaintiffs and Respondents,)

870486
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. ~~19605~~ 870486

COURT OF APPEALS
CASE NO. 860302-CA

REPLY TO BRIEF IN OPPOSITION 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

Florence J. Gillmor, Stephen)
T. Gillmor and Charles F.)
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Plaintiffs 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

REPLY TO BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

PRELIMINARY STATEMENT

This reply to the respondents' brief in opposition to the petition for writ of certiorari is filed pursuant to Rule 47(e) of the Rules of the Utah Supreme Court.

ARGUMENT

The response to the petition for writ of certiorari consists of general conclusions which are entirely unsupported by any reference to the record or the citation of cases or other

authorities. The general conclusions are meaningless and in some instances are contrary to the facts as follows:

1. The discussion on pages 2 and 3 of the brief in opposition relating to the motion of the respondents to correct alleged clerical errors in the findings of fact as to the number of lambs lost because of lambing in the Park City area instead of in Salt Lake County, is erroneous and misleading. The motion was briefed by both the respondents and appellants and was orally argued on the issue as to whether there had been a clerical error or a judicial error of 150 lambs. The motion was denied by the Supreme Court before the case was transferred to the Court of Appeals. A copy of the order denying the motion is in the Appendix. The respondents ignore the wording of the order and say that this Court simply reserved a decision on the issue "...until a full hearing on the appeal". They go on to say that the ruling of the Court of Appeals is "...entirely consistent with the Supreme Court's previous order".

It should be noted here that the Court of Appeals, in footnote 3 on page 7 of its opinion (Appendix A (1) to the Petition for Writ of Certiorari) states:

"Both parties point out to this Court the discrepancy between the finding and Stephen's calculated damages. We conclude the "352 head" in the finding should read "502 head". Such clerical error is insignificant to the issues on appeal". (Emphasis added)

The insignificant error of 150 lambs amounts to \$7,500, with accrued interest of \$4,500 to November 15, 1987, or a total

of \$12,000 to that date. This Court had already held that the error was not a clerical error, but was a judicial error, by denying the motion. The above quoted footnote therefore ignores the law of the case regarding the so-called clerical error!

2. It is stated on page 3 of the respondents' brief in opposition that the issues raised by the appellants do not identify any important questions of federal or state law, but "...Rather, the issues revolve around evidentiary matters or routine questions of procedure".

It will be noted by an examination of the issues presented for review, pages 2 and 3 of the petition for writ of certiorari, that they do not mention evidentiary or procedural issues, but state that the Court of Appeals misapprehended the significance of the order denying the motion to correct the alleged clerical error, ignored the significance of the trial court ruling that the ownership of the Swaner lease was not an issue in the case, misapprehended the law and facts regarding trespass, and that the trial court had made no finding of fact on any issue in the consolidated case of Gillmor Livestock Co., vs. Stephen T. Gillmor, et al.

These are hardly evidentiary and routine matters of procedure and not "...significant for Supreme Court level review", as contended by the respondents.

3. It is stated in the brief in opposition that the appellants "...have been accorded a full and fair hearing." This statement ignores what happened at the trial court level

which prevented a fair trial of the issues. As pointed out in the petition for writ of certiorari, pages 7 to 9, Counsel for the respondents delivered to counsel for the appellants a trial brief after the oral argument. The trial court granted appellants' request for an opportunity to read and answer the trial brief, and then, on the very next day, issued a memorandum opinion deciding the case in the respondents' favor, adopting the calculations in the trial brief of damages. It is hard to believe that deciding a case after considering only one side of the controversy on damages is a full and fair trial. This was ignored by the Court of Appeals.


CONCLUSION

The brief in opposition to the appellants' petition for writ of certiorari does not meet the arguments for the writ, but consists only of meaningless generalizations which are not supported by any references to the record or the law. The writ should be granted.

Respectfully submitted,

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CERTIFICATE OF MAILING

I certify that I caused four true and correct copies of the Reply to Brief in Opposition to Petition for Writ of Certiorari to be mailed, postage prepaid, this 25th day of January, 1988, to the following:

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A P P E N D I X

RESPONDENT'S MOTION TO CORRECT CLERICAL ERROR

Case No. 19683

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

August 1, 1984

APPENDIX

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

August 6, 1984

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RESPONDENT'S MOTION TO
CORECT CLERICAL ERROR

Florence J. Gillmor, Stephen T.
Gillmor and Charles F. Gillmor,
Plaintiffs and ~~Appellants~~.

v.

19683

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Livestock Corporation,
Defendants and ~~Respondents~~.

Gillmor Livestock Corporation,
a Corporation,
Plaintiffs and Appellants.

v.

Stephen T. Gillmor, Florence J.
Gillmor and Charles F. Gillmor,
Defendants and Respondents.

Respondent's motion to correct clerical error, having been considered, it is hereby ordered that the same be, and hereby is, denied.

Geoffrey J. Butler, Clerk

APPENDIX