

1988

# Gerald Golding v. Ashley Central Irrigation Company : Unknown

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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OCT 23 1989

Clerk. Suprem

Attorneys for Plaintiff

IN THE UTAH SUPREME COURT

STATE OF UTAH

GERALD GOLDING, Individually, )	
and as representative of the )	
heirs of RANDAL GOLDING, )	
deceased, )	RULE 24(j) SUPPLEMENTAL
)	MEMORANDUM
Plaintiff, )	
)	
vs. )	
)	
ASHLEY CENTRAL IRRIGATION )	Civil No. 880025
COMPANY, a Utah corporation, )	
)	
Defendant. )	
)	

Oral Argument in the above matter was heard before the Court on Thursday, October 12, 1989. Questions were posed by the Court to both counsel as to the effect of this Court's decision in the case of Crawford vs. Tilley, 118 Utah Adv. Rep. 32 (September 29, 1989). The Court in that case decided that "the Land Owner Liability Act should not protect from liability land owners who have not opened their property for public recreational use." (Id.) Neither counsel was familiar with the Crawford case, which the Court acknowledged was a very recent decision. Questions were also

asked by the Court regarding the Respondent's placement of signs prohibiting (or inviting) the public to use Respondent's waterways for recreational purposes. There was no evidence on this issue. Appellant therefore submits that the Trial Court's dismissal on the basis of the Utah Landowner Liability Act was inappropriate, and inconsistent with the Crawford decision, and that the Trial Court must receive evidence as to whether or not Respondent's canal had been opened for public recreational use before making any decision as to the applicability of the Landowners Liability Act.

Questions were also posed by the Court regarding Appellant's common law right to maintain a cause of action against Respondent. Appellant had not briefed or researched this issue inasmuch as the decision being appealed related solely to the applicability of the Landowner Liability Act. Inasmuch as the Court considers information on the Common Law cause of action against canal owners to be pertinent, Appellant refers the Court to the case of Weber vs. Springville City, 725 P.2d 1360, 1366 (Utah 1986). The Court in that case held that the attractive nuisance doctrine may apply to conditions that are artificial and uncommon, and may specifically apply to artificial bodies of water containing "hidden dangers". Appellant argued before the Court that the danger which caused Randal Golding's death was a hidden danger resulting from an underwater vortex created by the spillway in Respondent's canal.

Respectfully submitted this 20 day of October, 1989.

ASHTON, BRAUNBERGER, POULSEN  
& BOUD, P.C.

By David Alan Wilde  
Richard I. Ashton  
David A. Wilde

MAILING CERTIFICATE

This is to certify that a true and correct copy of the foregoing RULE 24(j) SUPPLEMENTAL MEMORANDUM was mailed, postage prepaid, to the following this 20 day of October, 1989.

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