

1988

# Gerald Golding v. Ashley Central Irrigation Company : Unknown

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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Geoffrey J. Butler, Clerk  
Supreme Court of Utah  
322 State Capitol Building  
Salt Lake City, Utah 84111:

RE: Gerald Golding vs. Ashley Central Irrigation Company  
Case No. 880025

Dear Mr. Butler:

After oral argument and in response to questions at oral argument, Appellant Golding filed a Supplemental Memorandum referring to the recent decision of this Court in Crawford vs. Tilley. Counsel for neither party was aware of the decision at the time of oral argument. This is Defendant/Respondent's reply to that Supplemental Memorandum. We request it to be made available to the Court as provided by Rule 24(J). We are furnishing ten (10) copies.

In its Supplemental Memorandum, Appellant argues that in view of the holding in Crawford vs. Tilley, the Trial Court's decision should be reversed because there is no evidence whether the Defendant, Ashley Central Irrigation Company, posted or kept people off its property.

Defendant's response to that argument is that this case was decided by the Trial Court on a Motion for Judgment on the pleadings.

Plaintiff's complaint, in paragraph 11(c), specifically alleges that Defendant did not "post appropriate warnings to the public of the extreme danger surrounding its waterways, canals, ditches and spillways" (emphasis added).

Furthermore, in the Plaintiff's brief on appeal in his

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recitation of the facts at page 4 states:

Defendant maintained no barricades, fences or other guards which would protect individuals such as Randal Golding from entering the irrigation canal or going over the spillway or entering into the area of the backwash created by the spill-way. Likewise, Defendant maintained no signs warning individuals such as Randal Golding of the dangers of entering into the irrigation canal . . . (emphasis added).

At pages 8, 9 and 10 of Plaintiff/Appellant's brief, the Plaintiff argues that the Defendant irrigation company did nothing to warn or exclude the public from the dangers Plaintiff alleges exist in Defendant's canals and ditches.

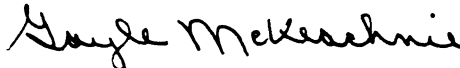
Defendant submits that the Trial Court's decision should be sustained whether the test is pre-Crawford or post-Crawford.

The central problem with the Plaintiff's case is that he did not and could not in good faith allege that the Defendant willfully or maliciously failed to guard or warn Plaintiff or the public. That allegation should be made with specificity under Rule 9(b) of the Utah Rules of Civil Procedure and was not.

Plaintiff's own claims in the complaint and its Brief of Appellant shows that the Utah Landowners Limitation of Liability Act is applicable under the Crawford decision because the Defendant irrigation company did not exclude the public from its property.

Respectfully submitted,

NIELSEN & SENIOR



Gayle F. McKeachnie

GM/kl  
enclosures  
cc: David A. Wilde  
Ashley Central Irrigation Company