

1990

# Ronald L. Baxter v. Utah Department of Transportation : Reply to Brief in Opposition

Utah Supreme Court

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BRIEF

**900016**

IN THE UTAH SUPREME COURT

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RONALD L. BAXTER and SHIRLEY :  
DIANE BAXTER, husband and wife, :  
  
Plaintiffs-Appellants: :  
  
vs. :  
  
UTAH DEPARTMENT OF TRANSPORTATION, :  
  
Defendant and Third-Party :  
Plaintiff-Respondent, :  
  
vs. :  
  
DAVIS COUNTY COMMISSIONERS; DAVIS :  
COUNTY ASSESSOR; DAVIS COUNTY :  
RECORDER; and WEBER COUNTY, a Body :  
Politic of the State of Utah, :  
  
Third-Party Defendants. :

Case No. 900016

Category 13

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REPLY BRIEF OF THE PETITIONERS TO  
RESPONDENT'S BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

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**FILED**

FEB 13 1990

Clerk, Supreme Court, Utah.

IN THE UTAH SUPREME COURT

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RONALD L. BAXTER and SHIRLEY :  
DIANE BAXTER, husband and :  
wife, :  
 :  
Plaintiffs and :  
Appellants, :  
vs. :  
 :  
RIO VISTA OIL, LTD., a :  
Utah Corporation, :  
 :  
An Involuntary : Case No. 900016  
Plaintiff, :  
 : Category 13  
vs. :  
 :  
UTAH DEPARTMENT OF :  
TRANSPORTATION, :  
 :  
Defendant, Third- :  
Party Plaintiff :  
and Respondent, :  
vs. :  
 :  
ROBERT REES DANSIE and MARIE :  
GROW DANSIE, his wife; DAVIS :  
COUNTY COMMISSIONERS; DAVIS :  
COUNTY ASSESSOR; DAVIS :  
COUNTY RECORDER; and WEBER :  
COUNTY, a Body Politic of :  
the State of Utah, :  
 :  
Third-Party :  
Defendants. :

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REPLY BRIEF OF THE PETITIONERS TO  
RESPONDENT'S BRIEF IN OPPOSITION TO  
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## STATEMENT OF FACTS

The Petitioners file the following reply in accordance with the provisions of Rule 47(E) Rules of the Utah Supreme Court.

It is a sad commentary on our legal profession when opposing counsel has to deliberately misstate the facts in an effort to bolster his client's position and undermine the opposition. This case was fully tried before Judge Ronald O. Hyde. The Petitioner in presenting their case in the Trial Court referred in the examination of one of its witnesses to Exhibits D-14, D-15 and D-16. The actual transcript in this case does not reveal that these three Exhibits were either introduced or received into evidence by either party. Consequently, when the trial was completed and the parties attorneys and the Clerk were sorting the Exhibits, these three Exhibits were not included and therefore, Defendant's counsel took all the Exhibits which had been marked, but never admitted into evidence, back to his office. When the Plaintiff-Respondent Baxter filed their brief, Petitioner filed a Motion to strike the use of the three Exhibits in their brief. The Utah Supreme Court could not make a decision that in fact these Exhibits had been received into evidence, and remanded the case back to the District Court with specific questions the Trial Judge must answer. Because the transcript did not show the three Exhibits as either being offered or received into evidence, Judge Hyde in desperation asked his Clerk

her opinion as to whether the Exhibits had been received into evidence. The Clerk replied that her memory was the Exhibits had been received. Judge Hyde answered the questions the Supreme Court certified as follows:

2. Did this Court have the Exhibits before it for the purpose of making its decision in this matter?

Answer: Yes, the Court orally indicated that it remembered the Exhibits and what was contained thereon.

Well if they were utilized during the questioning of witnesses, I certainly looked at them (Exhibit "2" attached to Petitioner's original brief, copy also attached).

Respondent's counsel would like this Court to believe the three Exhibits were intentionally removed from the District Court and consequently, the Petitioner should now be punished. The foregoing indicates totally to the contrary.

The record also indicates that it was Judge Gould who ordered that the Petitioner UDOT bring in Weber County and Rio Vista Oil so there would be a complete adjudication that would be binding on all concerned. (R. 62-68)

## ARGUMENT

### POINT I

THE COURT OF APPEALS HAS COMPLETELY IGNORED THE LAW AND THE FACTS PRESENTED IN THE TRIAL COURT AND HAS CHOSEN TO SUBSTITUTE ITS OWN DECISION.

There is absolutely no support in the Court's findings that a man made dike had been constructed and caused a diversion of the Weber River.

Also, Petitioner's counsel did not purposely remove its three Exhibits from the Courtroom. The transcript shows the Exhibits were neither offered or received into evidence. The answer of Judge Hyde also indicates he had the benefit of the Exhibits while the case was under advisement.

The Exhibits and the testimony show the Weber River prior to 1894 was meandering all over the place. Judge Hyde characterized it like a giant gorilla. If there were owners of property in the vicinity who wanted to know if their property was located in either Weber or Davis Counties it would have been impossible to determine as there was no metes and bounds description of the main channel of the Weber River.

Insofar as Exhibit "C" is concerned, the Exhibit speaks for itself and show the property in question as late as 1946 as being in both counties.

On the bifurcation issue it would have been a waste of everyone's time to have presented evidence of the invalidity of the actual sale, if the property in question was found to be in Weber County. It is curious that three attorneys feel the issues in the case were bifurcated.

#### CONCLUSION

The Petitioner did not withhold any of its Exhibits from the Trial Court. The Trial Court had seen the Exhibits as evidenced by the answers given to the questions certified by the Supreme Court. Mr. Fuller can only be attempting to introduce

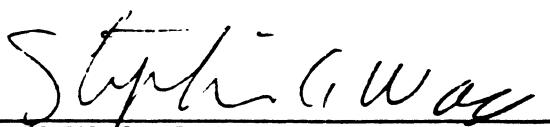
the foregoing as well as UDOT v. Rayco, 599 P.2d 481 in an attempt to enhance his client's position and further mislead this Court. The Rayco case has absolutely nothing to do with the merits of the present case. In the Rayco case the Court asked an appraiser while he was on the stand if he had his written appraisal in the Courtroom. The witness answered he did not. Neither the expert witness nor counsel was asked to produce the written appraisal. Justice Maughan misinterpreted the foregoing in writing the decision and determined the appraisals reports should have been produced. Mr. Fuller has obviously attempted to introduce the foregoing irrelevant material in an attempt to further mislead the Court and undermine Petitioner's case.

If this case is allowed to stand, it will create utter chaos insofar as the boundary between Davis and Weber Counties is concerned. The east and west six acres will be in Weber County, but the middle six acres will be in Davis County.

This will not end this litigation as the Court of Appeals has erroneously concluded.

DATED this 13 day of February, 1990.

R. PAUL VAN DAM  
Attorney General

  
STEPHEN C. WARD  
Assistant Attorney General  
Attorneys for Respondent



CERTIFICATE OF SERVICE

I certify that on the 12<sup>th</sup> day of February, 1990,  
four copies each of the foregoing Reply Brief of the Petitioners  
were mailed to:

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EXHIBIT "L"

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
 IN AND FOR WEBER COUNTY, STATE OF UTAH

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RONALD L. BAXTER and SHIRLEY	:	
DIANE BAXTER, husband and	:	
wife,	:	
	:	
Plaintiffs and	:	RULING ON ORDER OF REMAND
Appellants,	:	
vs.	:	
	:	
RIO VISTA OIL, LTD., a	:	
Utah Corporation,	:	
	:	
An Involuntary	:	Civil No. 74206
Plaintiff,	:	
	:	(Supreme Court No. 86-0562)
vs.	:	
	:	
UTAH DEPARTMENT OF	:	
TRANSPORTATION,	:	RE: Defendant's Motion
	:	to Strike Exhibits
Defendant, Third-	:	
Party Plaintiff	:	
and Respondent,	:	
	:	
vs.	:	
	:	
ROBERT REES DANSIE and MARIE	:	
GROW DANSIE, his wife; DAVIS	:	
COUNTY COMMISSIONERS; DAVIS	:	
COUNTY ASSESSOR; DAVIS	:	
COUNTY RECORDER; and WEBER	:	
COUNTY, a Body Politic of	:	
the State of Utah,	:	
	:	
Third-Party	:	
Defendants.	:	

-----oo0oo-----

In this action the above-named Plaintiffs Baxter filed an Appeal from the Judgment of this Court entered on October 6, 1986, setting forth in their Brief on Appeal that certain Exhibits used at the time of trial in this Court supported their argument for a reversal of the aforesaid Judgment; and Defendant Utah Department of Transportation having thereupon filed with the Supreme Court of the State of Utah a Motion to Strike said Exhibits; to-wit Defendant's Exhibits D-14, D-15, and D-15, contending in said Motion that the foregoing three (3) numbered Exhibits had never been offered and received in evidence; and

After having considered Defendant's Motion to Strike, based upon written Affidavits and Memoranda and a hearing, the Supreme Court of the State of Utah remanded the said Motion to Strike to this Court for the purpose of making determinations on specific issues set forth in the Order of Remand; and

The matter came on for hearing before the Honorable Ronald O. Hyde, District Judge, on Friday, May 22, 1987, at the hour of 11:00 a.m., Plaintiffs appearing by and through Glen E. Fuller, their attorney, and Defendant Utah Department of Transportation appearing by and through Stephen C. Ward, Assistant Attorney General; and respective counsel argued the matter and the Court thereupon examined the record and considered the same, and being fully advised in the premises hereby determines and orders that the issues certified to this Court by the Supreme Court of the State of Utah be, and they hereby are, answered as follows:

1. Did this Court receive Exhibits D-14, D-15, and D-16 in evidence:

ANSWER: Yes, the Court relied upon the fact that the Exhibit Sheet prepared by the Clerk of the Court showed the Exhibits as being received into evidence.

2. Did this Court have the Exhibits before it for the purpose of making its decision in this matter?

ANSWER: Yes, the Court orally indicated that it remembered the Exhibits and what was contained thereon.

Page 16 of the Transcript:

Well, if they were utilized during the questioning of witnesses, I certainly looked at them.

Page 18 of the Transcript:

That they were received, apparently, and were not taken into chambers.

I don't know they would have made any difference if I did have them, but apparently that's where it stands.

Page 19 of the Transcript:

They were not taken into chambers. I recall seeing them. I can remember them to that extent.

DATED this \_\_\_\_\_ day of June, 1987.

BY THE COURT:

---

RONALD O. HYDE  
District Judge