

1984

Elwood E. McFarland v. Skaggs Companies, Inc. : Petition Against Rehearing

Utah Supreme Court

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Recommended Citation

Response to Petition for Rehearing, *McFarland v. Skaggs Companies, Inc.*, No. 18352 (Utah Supreme Court, 1984).
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IN THE SUPREME COURT OF THE STATE OF UTAH

ELWOOD K. McFARLAND,)
Plaintiff/Respondent,)
vs.) Case No. 18352
SKAGGS COMPANIES, INC.,)
Defendant/Appellant.)

PETITION AGAINST REHEARING

Plaintiff/Respondent McFarland petitions this Court to deny Skaggs' request for a rehearing for the following reasons:

REHEARING SHOULD BE DENIED BECAUSE THE COURT HAS ALREADY RULED ON THE ISSUES RAISED BY SKAGGS' PETITION.

Skaggs' Petition for Rehearing manifests a continuing and willful ignorance of the rules of appellate procedure. Simply put, as the Court noted in its opinion, the facts on appeal must be reviewed in the light favorable to the party prevailing at trial. In this case then, the purported exception under which Skaggs asks for a rehearing before this Court, Section 77-7-6, is totally irrelevant.

This Court has found, as did the trier of fact below, that the purported "assault" "arrest" was merely a trumped-up excuse for a bad shoplifting arrest. This Court, and the trier of fact, found and believed that Dr. McFarland heard nothing about any supposed "assault" except by overhearing Avondet's self-serving description to the police officer while calmly seated in the Skaggs' security office on a supposed shoplifting charge.

Again, as noted in Respondent's main Brief to this Court, the exercise and invocation of this "commission" arrest privilege must be related to the policy behind the privilege. It is manifestly obvious that there is no such relationship here. Avondet simply tried to excuse her maliciously bad shoplifting arrest by a phony, uncharged, unproven, and unsupportable "assault" "arrest," which she didn't even tell Dr. McFarland about until the time of trial.

This totally unfounded attempt to rely upon an inapplicable statutory exception in sheer ignorance of proper appellate procedure should not be countenanced by this Court, and Skaggs' Petition for Rehearing should be summarily denied.

Respectfully submitted this 24th day of February,

1984.


FINDLEY P. GRIDLEY


BRUCE R. BAIRD

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CERTIFICATE OF MAILING

I hereby certify I mailed a true and correct copy of the foregoing Petition Against Rehearing to STEPHEN G. MORGAN, attorney for Defendant/Respondent, Morgan, Scalley & Reading, 261 East 300 South, Second Floor, Salt Lake City, Utah 84111, postage prepaid, on this 24th day of February, 1984.


SUE McCLURE Secretary

IN THE SUPREME COURT OF THE STATE OF UTAH

ELWOOD K. McFARLAND,)
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vs.) Case No. 18352
SKAGGS COMPANIES, INC.,)
Defendant/Appellant.)

PETITION AGAINST REHEARING

From a Jury Verdict in the Second District Court District
In and For Weber County
The Honorable Ronald O. Hyde Presiding

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FILED

FEB 27 1984

Clerk, Supreme Court, Utah