

1961

Maybeth Farr Reimann and Paul E. Reimann et al v.  
W. B. Richards, Jr., et al : Brief of Appellants in  
Answer to Brief of Cross-Appellants

Utah Supreme Court

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# IN THE SUPREME COURT of the STATE OF UTAH

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MAYBETH FARR REIMANN and PAUL  
E. REIMANN,

*Plaintiffs, Respondents and  
Cross-Appellants,*

—vs.—

W. B. RICHARDS, JR., A. Z. RICHARDS,  
A. Z. RICHARDS as "agent for applicants  
in Application No. A-1810 on file in the  
Office of State Engineer of Utah"; and J.  
ROY FREE,

*Defendants, Appellants and  
Cross-Respondents.*

Civil Nos. 107,485; 107,486 and 112,261

A. Z. RICHARDS, A. Z. RICHARDS as  
agent for Applicants in Application No.  
A-1810 on file in the office of the State  
Engineer of Utah; and W. B. RICHARDS,  
JR.,

*Plaintiffs, Appellants and  
Cross-Respondents,*

—vs.—

PAUL E. REIMANN, MAYBETH FARR  
REIMANN, his wife, GLEN E. YOUNG  
and WAYNE D. CRIDDLE, State Engineer  
of the State of Utah,

*Defendants, Respondents  
and Cross-Appellants.*

Civil No. 112,596

MAY 1 -  
Clerk, Supreme Court, Utah

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## APPELLANTS' BRIEF IN ANSWER TO BRIEF OF CROSS-APPELLANTS

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## APPELLANTS' BRIEF IN ANSWER TO BRIEF OF CROSS-APPELLANTS

### STATEMENT OF FACTS

The facts of this case have been adequately pre-  
sented in both of the briefs heretofore filed and need not  
be repeated here.

## STATEMENT OF POINTS

## I.

THE TRIAL COURT CORRECTLY DENIED THE MAYBETH SPRING APPLICATION.

## II.

THE COURT CORRECTLY DETERMINED THE AMOUNT OF DAMAGES.

## III.

THE COURT CORRECTLY DISALLOWED RECOVERY FOR DECEIT.

## IV.

THE COURT WAS WITHIN ITS REASONABLE DISCRETION IN REQUIRING EACH PARTY TO BEAR ITS OWN COSTS.

## ARGUMENT

## I.

THE TRIAL COURT CORRECTLY DENIED THE MAYBETH SPRING APPLICATION.

Under Point IV of the Cross-Appellants' brief, Mr. Reimann contends that the Maybeth Spring application should be approved. It is apparent, however, that the trial court was correct in its determination that the development of the Maybeth Spring area created no new water sufficient to permit the approval of the application to appropriate.

This "spring" is certainly one instance in this case in which the court did properly recognize that a person does not create newly developed water by opening up and increasing the surface flow of a spring area which is situate in the bed and on the bank of a stream.

The Maybeth Spring is one of the major sources of the Mount Air stream, and as has been developed fully in the Appellants' brief, could not be subject to further appropriation merely by digging a shovel into the ground to increase the surface flow.

One point Mr. Reimann makes on Page 43 of his brief, is based upon percentages of evaporation. He states an evaporation or transpiration loss of 77 per cent, and apparently attempts to claim such loss as a basis of a savings application. Again, as has been fully developed in Appellants' brief, the loss by evaporation and transpiration could not be and was not determined in a definitive amount either by Mr. Reimann's witness, or by Appellants' witnesses. The unprecedented alleged 77 per cent loss which Mr. Reimann speaks of is entirely unsupported by any evidence whatsoever.

Furthermore, Mr. Reimann apparently suggests that the Maybeth application be now considered as a savings application, whereas it was filed as an application to appropriate unappropriated water. The two types of applications are basically different in the practical proof thereof.

The basic problem of unappropriated water has been discussed in Appellants' brief and suffice it to say at this point, that the court's treatment of the Maybeth Spring is consistent with Appellants' position regarding the other spring area applications at issue herein.

## II.

THE COURT CORRECTLY DETERMINED THE  
AMOUNT OF DAMAGES.

Appellants raised no question as to the damages awarded for trespass on Mr. Reimann's land for the reason that said damages were nominal and based apparently upon a mere technical trespass. There was no finding by the court in support of any of the claims which Mr. Reimann sets forth in Point V of his brief. Under this point, he challenges the adequacy of the award of damages and at the same time, charges W. B. Richards at Page 47 of the brief, with "malicious" conduct, with "false representations" and "false accusations" to the State Engineer. It is difficult to see why such recriminatory claims are so unjustifiably made in the brief. Certainly they add nothing to this court's consideration of the problem relating to the adequacy of the evidence supporting alleged damage to Mr. Reimann's road. The record is clear as to the type of damage, the insignificant size of the stream involved and as to the lack of actual compensatory damage items. There certainly was nothing to support more than an award for nominal damages. The evidence must be considered in a light most favorable to support the court's Findings of Fact. *Rummel v. Bailey*, 7 Utah 2d 137.

### III.

#### THE COURT CORRECTLY DISALLOWED RECOVERY FOR DECEIT.

This concept of deceit now brought forth by Mr. Reimann under his point VI is strange indeed. At Pages 48 and 49, he seeks to charge W. B. Richards for Mr. Reimann's ill spent time—150 hours of detective work—

lost in the investigation of “innocent” suspects and “fictitious clues”.

The Respondents’ claims under this point are completely void of factual or legal support and would appear to be based only upon argument.

#### IV.

THE COURT WAS WITHIN ITS REASONABLE DISCRETION IN REQUIRING EACH PARTY TO BEAR ITS OWN COSTS.

Where both parties appealed to the District Court from decisions of the State Engineer, and where both parties were in part sustained in their contentions before the District Court, it certainly is not an abuse of discretion to award costs to neither of the parties.

Mr. Reimann’s complaint that the Appellants “have subjected the Reimanns to years of litigation” has no propriety in a consideration of this matter. Mr. Reimann’s comments are unwarranted. Appellants have a right to judicial review of the State Engineer’s decision and should not be condemned for exercising this right.

#### SUMMARY

The Trial Court’s determinations which have been objected to under Points V, VI and VII of the Respondents’ Cross-Appeal should be affirmed. The other points



raised in the Respondents' brief have been covered in the Appellants' original brief, and should be considered upon the arguments therein set forth.

Respectfully submitted,

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