

1965

R. George Bradbury and Althea Bradbury v.  
Gordon L. Rasmussen and Y'ora Gene Rasmussen  
: Petition for Rehearing

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

FILED

JUN 7 - 1965

R. GEORGE BRADBURY, Admin-  
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R. BRADBURY, Deceased, and  
ALTHEA BRADBURY,

*Plaintiffs and Respondents,*

vs.

GORDON L. RASMUSSEN and  
Y'ORA GENE RASMUSSEN,  
his wife,

*Defendants and Appellants.*

Supreme Court, Utah

Case No.  
10055

## PETITION FOR REHEARING

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## PETITION FOR REHEARING

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The Respondent respectfully petitions the Court  
for a re-hearing for the following reason:

**IN VIEW OF THE DECISION RENDERED  
BY THE COURT, THE CASE SHOULD BE  
REMANDED FOR A NEW TRIAL.**

Although the Respondent vehemently and emphatically disagrees with the decision of the Court since it appears that no consideration was given to the better opportunity of the Trial Court to observe the demeanor of witnesses, and the more advantageous position of the Trial Court in determining the credibility and weight to be given testimony; and since it appears that the Court first made a determination as to how it wanted to decide the case and then resorted to a recital of the evidence to support such a conclusion; the Respondent <sup>Submits</sup> admits that in spite of such decision the case should be remanded for a new trial rather than a decision of reversal only.

The position taken by the Trial Court and counsel for the Appellant at the initial stages of the trial concerning the existence of a confidential relationship, prejudicially eliminated a full and complete record of all of the evidence which could have been submitted supporting a determination that a confidential relationship did, in fact, exist. Although Appellants formerly denied the existence of a confidential relationship, their position both during the taking of depositions and the initial stages of the trial indicated that there was no genuine issue concerning the existence of such relationship. The Appellant Gordon Rasmussen on two separate occasions in his deposition in essence admitted that a confidential relationship existed. (See Pages 7 and 27 of said deposition. Also see the testimony of the same witness at page 189 of the Record). Counsel for the Appellants during the trial stated:

“There is no dispute about the fact that there was a confidential relationship.” (R. 78).

Thereafter counsel attempted to equivocate from such a stipulation. However, such an admission influenced the Court to conclude that there was no real issue involving such a relationship and the Court therefore indicated that there was little need to further develop the evidence on such issue. Since the Supreme Court now disagrees with that determination made by the Trial Court, it is obvious that such an indication of the Trial Court's position at the initial stages of the trial, prejudiced the Respondents in that all of the evidence which could have been submitted in support of such a determination was not submitted and therefore the case should be remanded for a new trial to permit the full development of the factual basis supporting the existence of a confidential relationship.

There is no doubt that ~~what~~ the trial court was thoroughly convinced that there was a close and confidential relationship as is repeatedly stated in its Memorandum Decision. See R. 31 and R. 33. As to the early attitude and position of the Court, reference is made to Pages 79 and 80 of the Record wherein the Court made it clear that it was the attitude of the Court that there was no real issue involving this matter in view of the admissions made by the Appellants. The Court summarized its position as follows:

“I can't see any point, for example, in arguing whether or not it was actually what you pleased to call a confidential relationship.” (R. 80).

It is obvious that the indication of the Court's feelings concerning this issue at the initial stages of the trial would deter and preclude a full and exhaustive presentation of the evidence on this issue. Since the Supreme Court has now ruled that the Trial Court was wrong in its determination on this issue, justice requires that the matter be remanded for a new trial so that the Respondents will not be prejudiced by the erroneous position taken by the Trial Court. The Appellants, by their testimony and by stipulation of their counsel, having contributed to the position taken by the Trial Court, should not be permitted to prevail because of such erroneous rulings by the Trial Court. Rather equity and fairness compels the conclusion that since the existence of a confidential relationship is the gravamen of the entire lawsuit this matter should be thoroughly presented to a trial court for a determination upon a retrial of the case on this issue.

Respectfully submitted, ' ,

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