

1994

# Evelyn Muir v. Apache Nitrogen Products and W.H. Burt Explosives v. Douglas Bailey : Petition for Rehearing

Utah Court of Appeals

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Shawn E. Draney, Rodney R. Parker; Shawn E. Draney; Rodney R. Parker; attorneys for appellee.

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UTAH

940553-CA

IN THE UTAH COURT OF APPEALS

EVELYN MUIR,	)	
	)	
Plaintiff and Appellant,	)	PETITION FOR REHEARING
	)	
vs.	)	Appeal No. 940553-CA
	)	
APACHE NITROGEN PRODUCTS	)	
and W.H. BURT EXPLOSIVES,	)	
	)	
Defendants and Appellees,	)	
	)	
vs.	)	
	)	
DOUGLAS BAILEY,	)	
	)	
Third-party Defendant	)	

APPEAL FROM THE SEVENTH DISTRICT COURT, GRAND COUNTY  
JUDGE ANDERSON

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**FILED**

SEP 26 1995

COURT OF APPEALS

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**IN THE UTAH COURT OF APPEALS**

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EVELYN MUIR, )

Plaintiff and Appellant, )

vs. )

APACHE NITROGEN PRODUCTS )  
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Third-party Defendant )

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**PETITION FOR REHEARING**

Appeal No. 940553-CA

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## PETITION

Plaintiff/Appellant, Evelyn Muir, through her attorney, Robert H. Copier, pursuant to U.R.A.P 35, respectfully petitions the Court for rehearing. The ground for this Petition is that the decision handed down on September 14, 1995 addressed only two of the three issues before the Court. Counsel certifies that this petition is presented in good faith and not for delay.

The decision of the Court of Appeals addressed Evelyn Muir's second and superseding Motion for Change of Venue which was filed because she was unable to attend the trial of her case in Grand County due to health reasons.

The Court of Appeals did not address, in its decision, the first and initial Motion for Change of Venue in which Evelyn Muir sought to change venue to Davis County as the place for trial as a matter of right after the Court in Grand County dismissed her first case there without prejudice and dismissed her second case there with prejudice. The designation of Grand County as the place for trial in the initial complaints was no longer effective, because both complaints were dismissed.

Both dismissals were reversed by the Utah Supreme Court, and Evelyn Muir promptly designated Davis County as the place for trial as a matter of right as plaintiff, and immediately moved for change of venue to Davis County as a matter of right. The question of law presented for review to the Court of Appeals is whether Judge Anderson was bound by plaintiff's designation of Davis County as a matter of right, an issue of first impression.

**CONCLUSION**

This matter should be reheard so that the Court can address Evelyn Muir's appeal of the denial of her first and initial Motion for Change of Venue to Davis County as the venue designated by plaintiff as a matter of right.

DATED THIS 26 DAY OF SEPTEMBER, 1995.

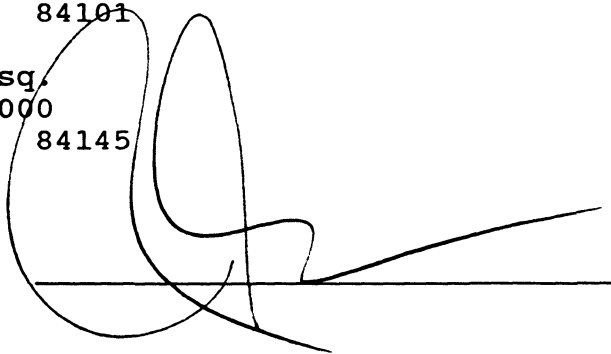
  
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ROBERT H. COPIER  
Attorney for Plaintiff/Appellant

**MAILING CERTIFICATE**

On this 26 day of September, 1995, a true and correct copy of the foregoing **PETITION FOR REHEARING** was mailed, postage prepaid, to:

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