

1995

# State of Utah v. Rod Gilmore : Brief of Appellant

Utah Court of Appeals

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## Recommended Citation

Brief of Appellant, *State of Utah v. Rod Gilmore*, No. 950728 (Utah Court of Appeals, 1995).  
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ORIGINAL

IN THE UTAH STATE COURT OF APPEALS

STATE OF UTAH, UHEAA

PLAINTIFF AND APPELLEE

95-0728-

v.

ROD GILMORE

DEFENDANT AND APPELLANT

APPELLANT'S BRIEF

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE CITY, UTAH. JUDGE FREDERICK

UTAH COURT OF APPEALS  
BRIEF

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## QUESTIONS PRESENTED

1. DID DEFENDANTS' GENERAL DENIAL IN ANSWER TO PLAINTIFFS' COMPLAINT PLACE PLAINTIFFS' ALLEGATIONS IN ISSUE?
2. IN LIGHT OF DEFENDANTS' GENERAL DENIAL, DID THE COURT BELOW IMPROPERLY GRANT THE MOTION FOR A JUDGMENT ON THE PLEADINGS?

## JURISDICTION

THIS MATTER IS ON APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE CITY, UTAH, JUDGE FREDERICK. THIS APPEAL WAS PROPERLY BROUGHT TO THE UTAH STATE SUPREME COURT PURSUANT TO SEC 78-2-2 AND SEC 78-2A-2, UTAH CODE 1953, AS AMENDED, AND REFERRED TO THE COURT OF APPEALS AS AN OVERFLOW MATTER.

## STATEMENT OF THE CASE

IN FEBRUARY OF 1995 PLAINTIFF FILED A COMPLAINT AGAINST DEFENDANT, WHICH DEFENDANT ANSWERED WITH A GENERAL DENIAL. SUBSEQUENTLY PLAINTIFF MOVED FOR A JUDGMENT ON THE PLEADINGS AND DEFENDANT FILED A MEMORANDUM IN OPPOSITION TO THE MOTION, POINTING OUT THAT THE PLEADINGS, ON THEIR FACE, SET FORTH EVERY MATERIAL ALLEGATION IN ISSUE, AND GAVE ROOM FOR DEFENDANT TO PRESENT THE ARGUMENT THAT THE COMPLAINT WAS PREMATURE. THE COURT NEVERTHELESS GRANTED THE MOTION AND DID NOT ADDRESS DEFENDANT'S ARGUMENTS IN OPPOSITION.

## ARGUMENT

1. DEFENDANT'S GENERAL DENIAL QUITE CLEARLY PUT EVERY MATERIAL ALLEGATION IN ISSUE. THERE WERE NO ADMISSIONS. THIS IS PRECISELY THE NATURAL AND FUNCTION OF A GENERAL DENIAL, VIA AMJR. A GENERAL DENIAL ALSO ALLOWS FOR THE ISSUE

OF WHETHER OR NOT THE ACTION WAS PREMATURE TO BE RAISED. 61A AMJUR 2d §364.

2. FOR THE COURT BELOW TO GRANT THE MOTION FOR A JUDGMENT ON THE PLEADINGS, IN VIEW OF THE GENERAL DENIAL AND THE MEMORANDUM IN OPPOSITION, WHICH CLEARLY STATED THAT THERE WERE ISSUES TO BE RESOLVED, WAS IMPROPER. "IT IS CLEAR THAT JUDGMENT FOR PLAINTIFF ON THE PLEADINGS CANNOT BE SUSTAINED... WHERE ISSUE IS JOINED ON A GENERAL DENIAL 16 OKLA 308 P3 P537; 61A AMJUR 2d §233.

A JUDGMENT ON THE PLEADINGS IS NOT FAVORED BY THE COURTS, AND CAN BE SUSTAINED WHEN, AND ONLY WHEN, UNDER THE FACTS THAT ARE ADMITTED, THE MOVING PARTY WOULD BE ENTITLED TO A JUDGMENT ON THE MERITS. SUCH A MOTION SHOULD BE SUSTAINED ON WHEN, UNDER CONCEDED FACTS, A JUDGMENT DIFFERENT FROM THAT PRONOUNCED COULD NOT BE RENDERED, NOTWITHSTANDING ANY EVIDENCE THAT MIGHT BE PRODUCED. 61A AMJUR 2d §231. ACCORDING

TO CJS PLEADING §426, "A MOTION FOR JUDGMENT ON THE PLEADINGS ADMITS THE TRUTH OF THE PLEADINGS OF THE OPPOSING PARTY."

IT APPEARS THAT THE GRANTING OF THE M WAS MERELY A RUBBER-STAMP APPROVAL OF A REC BY THE ATTORNEY GENERAL'S OFFICE. SINCE THE PLE THEMSELVES CONTRADICT THE REASON GIVEN BY THE COURT FOR GRANTING THE MOTION AND THE ISSUES IN OPPOSITION WERE NEVER ADDRESSED, THE GRANT SEEMS ARBITRARY AND CAPRICIOUS

APPELLANT RESPECTFULLY REQUESTS THIS COURT TO VACATE THE JUDGMENT OF THE COURT BE

ROD SHINE

TWO COPIES OF THIS BRIEF WERE MAILED TO  
THE ATTORNEY GENERAL'S OFFICE THIS 20<sup>TH</sup> DAY  
OCTOBER, 1995.

Ray Stene