

1997

Lamont Epperson v. Utah State Retirement Board : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Howard and Associates; Daniel D. Anderson; Attorneys for Respondent.

Suzan Pixton; Attorney for Petitioner.

Recommended Citation

Brief of Appellee, *Epperson v. Utah State Retirement Board*, No. 970075 (Utah Court of Appeals, 1997).
https://digitalcommons.law.byu.edu/byu_ca2/660

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU
50

.A10
DOCKET NO. 970075-CA

IN THE UTAH COURT OF APPEALS

LAMONT EPPERSON,

Petitioner/Appellant,

v.

UTAH STATE RETIREMENT BOARD

Respondent/Appellee.

:
:
:
:
:
:
:
:
:
:

Case No. 970075-CA

Priority No. 14

BRIEF OF APPELLEE

Appeal from the Utah State Retirement Board, Hearing Officer James L. Barker

Howard and Associates
Kevin A. Howard
Daniel D. Andersen
Attorneys for Respondent
560 East 200 South, Suite 230
Salt Lake City, Utah 84102

Suzan Pixton
Attorney for Petitioner
714 16th Avenue
Salt Lake City, Utah 84103

FILED

JUN 23 1997

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

LAMONT EPPERSON,

Petitioner/Appellant,

v.

UTAH STATE RETIREMENT BOARD

Respondent/Appellee.

:
:
:
:
:
:
:
:
:
:

Case No. 970075-CA

Priority No. 14

BRIEF OF APPELLEE

Appeal from the Utah State Retirement Board, Hearing Officer James L. Barker

Howard and Associates
Kevin A. Howard
Daniel D. Andersen
Attorneys for Respondent
560 East 200 South, Suite 230
Salt Lake City, Utah 84102

Suzan Pixton
Attorney for Petitioner
714 16th Avenue
Salt Lake City, Utah 84103

TABLE OF CONTENTS

| | |
|---|----|
| JURISDICTION | 1 |
| STATEMENT OF ISSUES PRESENTED FOR REVIEW | 1 |
| STANDARD OF REVIEW | 1 |
| DETERMINATIVE PROVISIONS | 2 |
| STATEMENT OF THE CASE | 2 |
| I. Nature of Case | 2 |
| II. Course of Proceedings | 2 |
| III. Disposition By the Agency Below | 3 |
| STATEMENT OF FACTS | 3 |
| SUMMARY OF ARGUMENTS | 3 |
| ARGUMENT | 4 |
| Point I | |
| MR. EPPERSON'S "INTRODUCTION" IS IMPROPER AND MUST BE DISREGARDED BY THIS COURT | 4 |
| Point II | |
| THE PLAIN AND UNAMBIGUOUS LANGUAGE OF SECTION 49-5-704 DOES NOT CREATE A BENEFIT ON BEHALF OF MS. EPPERSON | 5 |
| Point III | |
| THE ADMINISTRATIVE HEARING OFFICER PROPERLY REFUSED TO ADMIT ANY EVIDENCE CONCERNING LEGISLATIVE INTENT | 7 |
| CONCLUSION | 10 |

TABLE OF AUTHORITIES

Cases Cited

| | |
|---|------|
| <u>Allred v. Utah State Retirement Board</u> , 914 P. 2d 1172 (Ut. App. 1996). | 1 |
| <u>Larsen v. Allstate</u> , 857 P. 2d 263 (Utah 1993) | 7, 8 |
| <u>Johnson v. Utah State Retirement Bd.</u> , 770 P. 2d 93 (Utah 1988) | 7, 8 |

| | |
|---|---|
| <u>Cole v. Jordan School Dist.</u> , 899 P. 2d 776 (Utah 1995) | 7 |
| <u>Gallatin County v. D & R Music Vending</u> , 676 P. 2d 779 (Mont. 1984) | 8 |
| <u>Whitcomb v. Young</u> , 279 N.E. 2d 566 (Ind. 1972). | 8 |
| <u>Commissioner's Court of El Paso v. El Paso County Sheriffs Association</u> , 620 S.W. 2d 900 (Tex. Civ. App. 1981) | 9 |
| <u>Picture Rocks Fire Dist. v. Pima County</u> , 733 P. 2d 639 (Ariz. App. 1986) | 9 |
| <u>Bagg v. Wickizer</u> , 50 P. 2d 1047 (Cal. 4th App. 1935) | 9 |
| <u>Rausch v. Nelson</u> , 134 N.W. 519 (N.D. 1965) | 9 |

Rules Cited

| | |
|--|---|
| Utah Rules of Appellate Procedure, Rule 14 | 1 |
|--|---|

Statutes Cited

| | |
|---|------------|
| Utah Code Annotated § 49-1-610(4) | 1 |
| Utah Code Annotated § 63-46b-16 | 1 |
| Utah Code Annotated § 78-2a-3(2)(a) | 1 |
| Utah Code Annotated § 49-5-704 | 1-7, 9, 10 |
| Utah Code Annotated § 49-5-401 et seq. | 6 |

Authorities

| | |
|--|---|
| Sutherland Statutory Construction; 5th Edition Section 46.04 | 8 |
| Sutherland Statutory Construction; 5th Edition Section 48.16 | 9 |

JURISDICTION

Utah Code Annotated § 49-1-610(4) allows a member who is aggrieved by a decision of the Utah State Retirement Board ("Board") to obtain judicial review by complying with the procedures and requirements of Chapter 46, Title 63, of the Utah Code Annotated, the Administrative Procedures Act.

Utah Code Annotated § 63-46b-16 confers jurisdiction on the Supreme Court or other appellate court designated by statute to review all final agency action resulting from formal adjudicative hearings.

Utah Code Annotated § 78-2a-3(2)(a) and rule 14 of the Utah Rules of Appellate Procedure confer jurisdiction on the Court of Appeals over the final orders and decrees resulting from formal adjudicative proceedings.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Is Mr. Epperson's "Introduction" of legislative interest properly before this Court?
2. Was the Utah State Retirement Board ("Board") correct in determining that Utah Code Annotated § 49-5-704 does not provide a firefighter's former spouse a death benefit if the firefighter does not have a dependent spouse at the time of his death?
3. Did the Hearing Officer properly disallow evidence of legislative interest?

STANDARD OF REVIEW

As the determination in this case is primarily a question of law, and as of the date this matter was decided by the Hearing Officer, there was no express or implied grant of discretion to the Board to interpret statutes, this Court will review the Board's interpretation under a correction of errors standard. Allred v. Utah State Retirement Board, 914 P. 2d 1172 (Ut. App. 1996).

DETERMINATIVE PROVISIONS

49-5-704. Death of Retired Member - Benefits.

- (1)(a) Except as provided in Subsection (3), the death benefit payable to a dependent spouse after death of the retirant is a monthly amount equal to 75% of the allowance being paid to the retirant at the time of death.
- (b) The effective date of accrual of this pension is the first day of the month following the month the retirant died.
- (c) Except as provided in Subsection (3), payment of the full pension for this latter month shall be made to the dependent beneficiary instead of the deceased member.
- (2) If the member retires under Division B and dies leaving dependent children, they qualify for benefits prescribed for children under Section 49-5-701 or 49-5-702.
- (3)(a) In the event of a court order complying with Section 49-1-609 a former spouse of a retired member is entitled to the court designated share of the retirant's monthly retirement benefit and the court designated share of the spouse's death benefit.
- (b) This subsection supersedes conflicting subsections of this section.

STATEMENT OF THE CASE

I. Nature of the Case.

This is an appeal from a declaratory order of the Hearing Officer of the Board, James L. Barker, adopted by the Board on December 19, 1996, denying Mr. Epperson's request for a declaratory order which would require a death benefit to be paid to his former spouse at the time of his death.

II. Course of Proceedings.

Ms. Epperson filed a Request for Board Action on September 28, 1995, (R.1). Due to a

number of deficiencies in that Request, Ms. Epperson's former spouse, LaMont Epperson, a member of the Firefighters' Retirement System, filed a Request for a declaratory order in 1996 (R. 70). The Board filed a Motion to Dismiss the Request for a declaratory order on July 18, 1996. After briefing of the issues by both parties, hearings were held in this matter on November 14th and November 21st, 1996.

III. Disposition By the Agency Below

After the hearings in this matter, the Hearing Officer entered a declaratory order, later adopted by the Board, denying Mr. Epperson's request for relief since Utah Code Annotated § 49-5-704 requires that a firefighter have a dependent spouse at the time of his death before a former spouse has the right to a benefit.

STATEMENT OF FACTS

1. Mr. Epperson retired from the Salt Lake City Fire Department on September 1, 1992, (R. 73).
2. Mr. Epperson is currently alive and receiving a monthly retirement benefit from the Utah Retirement Systems (R. 73).
3. Mr. Epperson and his former spouse, Ms. Epperson, were divorced on April 13, 1992, (R. 2-10, 24, 73).
4. Ms. Epperson is currently receiving a portion of Mr. Epperson's monthly retirement benefit pursuant to a domestic relations order (R. 73).
5. Mr. Epperson has not remarried since his divorce from Ms. Epperson (R. 73).

SUMMARY OF ARGUMENTS

1. Mr. Epperson's "Introduction" is improper, violates the Rules of Appellate Procedure, and cannot be used by this Court as a basis for its decision.

2. The plain and unambiguous language of Utah Code Annotated § 49-5-704 only creates a spouse's death benefit when a firefighter has a dependent spouse at the time of his death. The statute then allows a former spouse to share in that benefit if it exists. Mr. Epperson does not have a dependent spouse and therefore, unless Mr. Epperson remarries and has a dependent spouse at the time of his death, no benefit is created in which the former Ms. Epperson can share.

3. Since Utah Code Annotated § 49-5-704 is clear and unambiguous as a matter of law, evidence of a legislative history was properly barred by the Hearing Officer. Also, the testimony of an individual legislator is inadmissible to show legislative intent.

ARGUMENT

Point I

Mr. Epperson's "Introduction" Is Improper and Must Be Disregarded By This Court

Pages 4 and 5 of Mr. Epperson's brief contain an "Introduction" outlining his version of the legislative intent and history behind the statute at issue in this matter. Not only is such "Introduction" not permitted by the Rules of Appellate Procedure, the "Introduction" purports to submit facts which were not received in evidence and are not part of the record in this matter. The most troubling aspect of Mr. Epperson's "Introduction" is that he attempts to put before this court evidence that was specifically excluded by the Hearing Officer. Courts of appeal do not sit as triers of fact. The Rules of Civil Procedure and Appellate Procedure do not allow a party to submit evidence to an Appellate Court when it has been excluded at the evidentiary phase of the proceeding.

In response to Mr. Epperson's "Introduction" the Board has substantial evidence to prove that the statute in question was never intended to create a benefit for a person in Ms. Epperson's position since such benefit was never funded. However, since it would be equally improper for

the Board to submit excluded evidence to this Court, such evidence will not be submitted.

Such knowing violation of the rules of court cannot be used as a basis for any portion of this Court's decision. Accordingly, Mr. Epperson's "Introduction" must be disregarded by this Court in rendering a decision in this matter.

Point II

The Plain and Unambiguous Language of Section 49-5-704 Does Not Create a Benefit on Behalf of Ms. Epperson.

The primary issue before this court is whether the spouses death benefit created under Utah Code Annotated § 49-5-704 is payable to a former spouse of a firefighter if there is no dependent spouse at the time of the firefighter's death. An analysis of the statute shows that its clear and unambiguous language requires a dependent spouse at the time of the firefighter's death in order to create a spouse's death benefit. Since there is no dependent spouse, there is no benefit payable to Ms. Epperson.

Utah Code Annotated § 49-5-704 creates benefits for spouses of retired firefighters.

- (1)(a) Except as provided in Subsection (3), the death benefit payable to a dependent spouse after death of the retirant is a monthly amount equal to 75% of the allowance being paid to the retirant at the time of death.
- (b) The effective date of accrual of this pension is the first day of the month following the month the retirant died.
- (c) Except as provided in Subsection (3), payment of the full pension for this latter month shall be made to the dependent beneficiary instead of the deceased member.
- (2) If the member retires under Division B and dies leaving dependent children, they qualify for benefits prescribed for children under Section 49-5-701 or 49-5-702.
- (3)(a) In the event of a court order complying with Section 49-1-609 a former spouse of a retired member is entitled to the court designated share of the retirant's monthly retirement benefit and the

court designated share of the spouse's death benefit.

(b) This subsection supersedes conflicting subsections of this section.

According to Subsection (3), there are two benefits, created elsewhere in the statute, which may be split with a former spouse: a "retirant's monthly benefit" and a "spouse's death benefit." A retirant's monthly benefit only comes into existence once statutory conditions are met such as accumulating the appropriate number of years of service and properly applying for the benefit (Section 49-5-401 et seq.). Once that benefit is created, if a proper domestic relations order is filed, a former spouse can receive a "court designated share" of that existing benefit.

The same "court designated share" language is used in splitting the "spouse's death benefit." In order for a former spouse to receive a portion of the spouse's death benefit, that benefit must be created in accordance with statute. Subsection 49-5-704(1) creates the spouse's death benefit and states that this benefit is payable to a "dependent spouse." Mr. Epperson is currently not married and has no "dependent spouse." (R. 73) The existence of a dependent spouse is a condition precedent to the existence of a spouse's death benefit. If the spouse's death benefit is not created due to a failure of a condition precedent, there is no spouse's death benefit in which a former spouse can share.

At no point in these proceedings has Mr. Epperson offered an alternative analysis of the language of Section 49-5-704. A former spouse's benefit is clearly and unambiguously contingent upon the existence of a dependent spouse at the time of the firefighter's death. There are no other rational readings of this statute.

Utah law is well-settled that when statutory language is clear and unambiguous the courts will not contradict its plain meaning.

When statutory language is plain and unambiguous, we do not look beyond the same to divine legislative intent. [Citations Omitted.] Rather, we construe a statute according to its plain language. [Citations Omitted.] Specifically, we will not interpret unambiguous language in a statute to contradict its plain meaning. [Citations Omitted.]

Larsen v. Allstate, 857 P. 2d 263 (Utah 1993).

The Utah Supreme Court has also held that legislative history cannot affect the plain meaning of the statute. See, Johnson v. Utah State Retirement Bd, 770 P. 2d 93, 95 (Utah 1988). See also, Cole v. Jordan School Dist., 899 P. 2d 776, 778 (Utah 1995).

Subsection 49-5-704(1) only creates a right in a former spouse to receive a benefit if there is a dependent spouse at the time of the member's death. This is the only interpretation which can be given to this language. Since Mr. Epperson does not currently have a dependent spouse, and assuming he has no dependent spouse at the time of his death, there is no spouse's death benefit in which Ms. Epperson can participate. Therefore, the administrative Hearing Officer's declaratory order must be affirmed by this court.

Point III

The Administrative Hearing Officer Properly Refused to Admit Any Evidence Concerning Legislative Intent

A. Extrinsic Evidence Is Not Appropriate When a Statute Is Clear and Unambiguous.

As discussed in the preceding point, Subsection 49-5-704(1) clearly and unambiguously creates a right in a former spouse to participate in a spouse's death benefit only if the member has a dependent spouse at the time of the member's death. Since the statute is clear and unambiguous, the administrative Hearing Officer's decision to exclude evidence of legislative history or intent was appropriate.

In instances of statutory interpretation, the Court first determines, as a matter of law, whether

the statute is ambiguous. If not, the Court is required, once again as a matter of law, to give effect to the unambiguous language of the statute. No evidence of legislative history or other extrinsic evidence is required or appropriate since there are no questions of fact before the Court. ("When the language of the statute is clear and unambiguous, no parol evidence is permissible.") Gallatin County v. D & R Music Vending, 676 P. 2d 779, 782 (Mont. 1984); ("When a statute or amendment to a constitution is clear, then no extrinsic evidence may be submitted as to legislative intent.") Whitcomb v. Young, 279 N.E. 2d 566, 574 (Ind. 1972).

The Hearing Officer determined that the statute was unambiguous and proceeded to rule as a matter of law. Utah courts do not interpret statutes to contradict their plain meaning, Larsen at 263, and where statutory language is clear, its meaning cannot be affected by resort to legislative history, Johnson at 95.

Treatises on statutory construction also clearly state that courts must give clear and unambiguous statutes the effect of their plain meaning and legislative history cannot alter that meaning.

According to most expressions of the doctrine of literalism, courts are bound to give effect to the literal meaning without consulting other indicia of intent or meaning when the meaning of the statutory text itself is "plain" or "clear and unambiguous."...

It is often declared that aides to interpretation can be used only to resolve ambiguity and never to create it. It has been clearly and repeatedly said that courts do not have the authority to ignore plain and unambiguous language in the guise of providing statutory interpretation. Even legislative history cannot be used to override express terms of a statute which are not ambiguous and contain no limitations on the scope of the act's provisions.
(Emphasis added.)

Sutherland Statutory Construction; 5th Edition Section 46.04.

The Hearing Officer properly found that evidence of legislative history was unnecessary and

inappropriate since the statute was clear and unambiguous as a matter of law.

B. Testimony Of An Individual Legislator Is Improper To Ascertain Legislative Intent.

Mr. Epperson complains that Representative Mary Carlson of the Utah House of Representatives was not given the opportunity to testify as to the intent of the legislature in passing Section 49-5-704. Courts around the country have recognized that it is improper to admit the testimony of an individual legislator on the issue of legislative intent.

In Commissioner's Court of El Paso v. El Paso County Sheriffs Association, 620 S.W. 2d 900 (Tex. Civ. App. 1981) the legislative sponsor of a bill testified as to his opinion of the effect of the proposed legislation. On appeal, the Court found that allowing the testimony of the legislator was error.

Admission of this testimony was error, as the testimony does not go to what the legislature as a whole intended and is therefore irrelevant. [Citation Omitted.] A statute is an act of the legislature as an organized body, and the express collective will of that body. No single member can be heard to say what the meaning of the statute is. It must speak for and be construed by itself. [Citation Omitted.]

Id. at 902.

Other courts have clearly held that the testimony of an individual legislator is inadmissible to show legislative intent.

The rule is clearly established in Arizona that one member of the legislature which passes a law is not competent to testify regarding the intent of the legislature in passing that law.

Picture Rocks Fire Dist. v. Pima County, 733 P. 2d 639 (Ariz. App. 1986).

And it still remains true that the testimony or opinions of individual members of the legislative body are not admissible for the purposes showing what, in fact, was intended or meant by an act.

Bagg v. Wickizer, 50 P. 2d 1047 (Cal. 4th App. 1935). See also, Rausch v. Nelson, 134 N.W. 519 (No. Dak. 1965); Sutherland Statutory Construction 5th Edition Sec. 48.16.

Under the rule announced in the forgoing cases, Representative Carlson's testimony would have been properly excluded even if the statute was found to be ambiguous.

For both of the reasons stated above, the Hearing Officer properly excluded Representative Carlson's testimony as being extrinsic and irrelevant.

CONCLUSION

The language of Section 49-5-704 requires that a firefighter have a dependent spouse at the time of his death before a spouse's death benefit is created. If no spouse's death benefit is created, there is no benefit in which a former spouse can participate. Nowhere in the Utah Retirement Act is a separate, stand-alone spouse's death benefit created on behalf of former spouse's of firefighters. Accordingly, the administrative Hearing Officer was required to deny Mr. Epperson's request for a declaratory order.

Since Section 49-5-704 is clear and unambiguous as a matter of law, the Hearing Officer's exclusion of extrinsic testimony was appropriate. Moreover, the testimony of an individual legislator is inadmissible to prove the intent of the legislation in question.

Based on the forgoing, the Board respectfully requests that this Court enter an order affirming the declaratory order of the Hearing Officer and the Board.

6/23/97
Date

Dal
KEVIN A. HOWARD
DANIEL D. ANDERSEN
Counsel for Utah State Retirement Board

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the forgoing Response to Request for Board Action by first-class mail, postage prepaid, addressed as follows:

Suzan Pixton
Attorney for Petitioner
714 16th Avenue
Salt Lake City, UT 84103

DATED this 23 day of June, 1997.

Dan H. H.