

2008

Julie Ann Olson v. Utah Department of Health : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



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.

Nan T. Bassett; Kip and Christian; Attorney for Plaintiff.

Peggy R. Stone; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; Attorney for Defendant/Petitioner.

Recommended Citation

Reply Brief, *Olson v. Utah Department of Health*, No. 20080937 (Utah Court of Appeals, 2008).
https://digitalcommons.law.byu.edu/byu_ca3/1280

This Reply Brief 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.

grayZ

No. 20080937

IN THE UTAH COURT OF APPEALS

JULIE ANN OLSON,
Plaintiff and Respondent,

v.

UTAH DEPARTMENT OF HEALTH,
Defendant and Petitioner.

UTAH DEPARTMENT OF HEALTH'S REPLY BRIEF

Interlocutory appeal from an order denying a motion for summary
judgment of the Third Judicial District Court, Salt Lake County,
the Honorable Joseph C. Fratto presiding

NAN T. BASSETT
KIPP & CHRISTIAN
10 EXCHANGE PLACE, 4TH FLOOR
SALT LAKE CITY, UT 84111
ATTORNEY FOR PLAINTIFF

PEGGY E. STONE (6658)
Assistant Utah Attorney General
MARK L. SHURTLEFF (4666)
UTAH ATTORNEY GENERAL
160 EAST 300 SOUTH, SIXTH FLOOR
PO BOX 140856
SALT LAKE CITY, UTAH 84114-0856
TELEPHONE: (801) 366-0100
Attorneys for Defendant/Petitioner

FILED
UTAH APPELLATE COURTS
MAR 31 2009

No. 20080937

IN THE UTAH COURT OF APPEALS

JULIE ANN OLSON,
Plaintiff and Respondent,

v.

UTAH DEPARTMENT OF HEALTH,
Defendant and Petitioner.

UTAH DEPARTMENT OF HEALTH'S REPLY BRIEF

Interlocutory appeal from an order denying a motion for summary
judgment of the Third Judicial District Court, Salt Lake County,
the Honorable Joseph C. Fratto presiding

NAN T. BASSETT
KIPP & CHRISTIAN
10 EXCHANGE PLACE, 4TH FLOOR
SALT LAKE CITY, UT 84111
ATTORNEY FOR PLAINTIFF

PEGGY E. STONE (6658)
Assistant Utah Attorney General
MARK L. SHURTLEFF (4666)
UTAH ATTORNEY GENERAL
160 EAST 300 SOUTH, SIXTH FLOOR
PO BOX 140856
SALT LAKE CITY, UTAH 84114-0856
TELEPHONE: (801) 366-0100
Attorneys for Defendant/Petitioner

TABLE OF CONTENTS

Table of Authorities	-iv-
Reply Arguments	-1-
I. The statute’s plain language controls	-1-
II. Draughon has been superceded by statute	-6-
Conclusion	-7-
Certificate of Service	-8-

TABLE OF AUTHORITIES

CASES

<i>Draughon v. Dep’t of Fin. Inst.</i> , 1999 UT App. 42, 975 P.2d 935	4, 6-7
<i>Housing Auth. v. Snyder</i> , 2002 UT 28, 44 P.3d 724	3
<i>Pub. Citizens v. United States Dep’t of Justice</i> , 491 U.S. 440 (1989)	4
<i>State ex rel Z.C.</i> , 2007 UT 54, 165 P.3d 1206, 1209	3, 4
<i>State v. Anderson</i> , 2007 UT App. 304, 169 P.3d 778	4
<i>State v. Gonzales</i> , 2005 UT App. 538, 127 P.3d 1252	3

STATUTES

Utah Code Ann. § 67-19-3(7)(a) (West Supp. 2008)	2
--	---

No. 20080937

IN THE UTAH COURT OF APPEALS

JULIE ANN OLSON,
Plaintiff and Respondent,

v.

UTAH DEPARTMENT OF HEALTH,
Defendant and Petitioner.

UTAH DEPARTMENT OF HEALTH'S REPLY BRIEF

The Utah Department of Health (DOH) files this Reply Brief in support of its interlocutory appeal from the denial of its motion for summary judgment.

REPLY ARGUMENTS

I. The statute's plain language controls.

The district court created an additional definition of "demotion" to include "disciplinary transfers" that have no accompanying reduction in the employee's current actual wage. The district court's construction is not supported by the plain statutory language. The Legislature defined "demotion" as a "**disciplinary** action resulting in a **reduction of an**

employee's current actual wage." Utah Code Ann. § 67-19-3(7)(a) (West Supp. 2008) (emphasis added). And despite the district court's construction and Olson's arguments, subsection (b)(i) does not define the actions that constitute a demotion, instead that section makes clear the actions not constituting a demotion.¹

By statutory definition, a demotion requires a reduction in current actual wage; that means a reduction in hourly pay, nothing more or less. The term "current" is defined as "occurring in or existing at the present time." *Merriam-Webster Online Dictionary* (2009), available at <http://www.merriam-webster.com/dictionary>. "Actual" is defined as "existing in act and not merely potentially, existing or occurring at the time." *Id.* And "wage" is defined as "a payment, usually of money, for labor or services usually according to contract and on an hourly, daily or piecework basis." *Id.* It is undisputed that DOH restored Olson's current actual wage. Under the ordinary and accepted meaning of each, crucial statutory term, Olson was not demoted because she suffered no

¹ (b) "Demotion" **does not mean:**

(i) a nondisciplinary movement of an employee to another position without a reduction in the current actual wage;

reduction in her current actual wage. The district court erred by not granting DOH's motion for summary judgment.

Courts turn to other methods of statutory construction only when the statutory language is ambiguous. *State v. Gonzales*, 2005 UT App. 538, ¶ 9, 127 P.3d 1252; *see also Housing Auth. v. Snyder*, 2002 UT 28, ¶ 10, 44 P.3d 724. Because there is no ambiguity, this Court's inquiry should end with the statute's plain language.

Moreover, this Court should decline to apply exceptions to the plain language rule. Contrary to Olson's assertions, applying the plain language rule to the definition of demotion here, leads to neither absurd results nor a contravention of expressed legislative intent. The absurd result exception to the plain meaning rule is narrowly limited. *State ex rel Z.C.*, 2007 UT 54, ¶ 12, 165 P.3d 1206, 1209. Utah's appellate courts recognize that it is not their duty to assess the wisdom of the statutory scheme. Instead, a court's task is to "interpret the words used by the legislature, not to correct or revise them. When the words are clear, however incongruous they may appear in policy application, the court will interpret them as written, leaving to the legislature the task of

making corrections when warranted.” *State v. Anderson*, 2007 UT App. 304, ¶ 11, 169 P.3d 778.

In sum, the absurd result exception “applies only where the result is so absurd that ‘Congress could not *possibly* have intended’ it.” *State ex rel Z.C.*, 2007 UT 54 at ¶ 12 (quoting *Pub. Citizens v. United States Dep’t of Justice*, 491 U.S. 440, 470 (1989)(Kennedy, J., concurring)) (emphasis in original). Here, the Legislature intended an employee to be demoted only when the employee suffers a reduction in current actual wage. The 2006 statutory amendment makes that intent clear. If the Legislature intended other actions to constitute demotions it could have so stated. For example, prior to the amendment, this Court found that an employment action was a demotion if it resulted in “less status, fewer responsibilities, a lower pay range, and will ultimately result in commensurately lower retirement benefits” even if the grievant suffered “no immediate loss of pay.” *Draughon v. Dep’t of Fin. Inst.*, 1999 UT App. 42, ¶ 10, 975 P.2d 935. If the Legislature intended that result, it could have codified the *Draughon* decision, or left the term demotion undefined. It did neither, and instead, used a more limited definition. If that definition is unwise policy, it is for the Legislature to

fix. Ultimately, the absurd result exception to the plain language rule does not apply to this case.

The plain meaning of demotion also does not contravene the Legislature's goals as set forth in the act. Section 67-19-3.1(2) does not apply here because the "fair treatment" language applies only to claims of discrimination based on membership in protected classes. The section provides for "fair treatment of applicants and employees in all aspects of human resource administration without regard to race, color, religion, sex, national origin, political affiliation, age, or disability, and with proper regard for their privacy and constitutional rights as citizens." Olson has never claimed that DOH took action against her because of her membership in a protected class. That section simply has no application here. The demotion definition does not contravene any expressed legislative intent.²

² Olson implies that an employee can never challenge an employment action that has no accompanying reduction in current actual wage. That is not true. Employment actions that are believed to be illegal can be challenged with the aid of the Utah Antidiscrimination and Labor Division, the Equal Employment Opportunity Commission, and federal and state courts under Title VII, the Americans with Disabilities Act, the Family Medical Leave Act, and Age Discrimination in Employment Act, and other federal and state laws.

For the first time here, Olson argues that DOH unfairly caused her to pay attorney fees. Olson failed to make that argument before the district court, and the record does not support it. And, as Olson acknowledges in a footnote, the CSRB cannot award attorney fees as part of a grievance. Furthermore, the argument supports neither the district court's improper creation of an additional definition of demotion nor the concomitant expansion of CRSB jurisdiction.

II. *Draughon* has been superceded by statute.

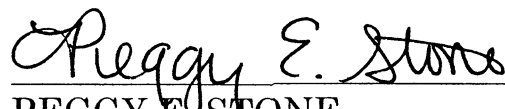
DOH agrees that the *Draughon* case has limited applicability here; the controlling statute has changed. But the *Draughon* decision is illustrative because it demonstrates the Legislature's intent by inclusion of the express definition of demotion. The *Draughon* court found no statutory support for DHRM's definition of demotion; the Act did not draw the distinction between demotion and involuntary transfer found in the DHRM rule. *Id.* at ¶¶ 10-11. The Legislature rejected the court's definition and defined the term consistent with the original DHRM rule. Thus, *Draughon* was overruled in so far as it was

superceded by statute. Because the controlling statutory language is different, *Draughon* has no application here and can neither be affirmed nor overruled.

CONCLUSION

For an employment action to be a demotion, the employee must suffer a reduction in current actual wage. Here, the district court improperly ignored the statute's plain language when it denied DOH's motion for summary judgment. This Court should correct the district court's statutory construction and reverse that court's denial of DOH's summary judgment motion.

Dated this 31st day of March, 2009.



PEGGY E. STONE

Assistant Utah Attorney General
Attorney for Defendant/Petitioner Utah
Department of Health

CERTIFICATE OF SERVICE

This is to certify that I mailed two copies of the foregoing,
UTAH DEPARTMENT OF HEALTH'S REPLY BRIEF, and an electronic copy of
the brief on computer disk, to the following this 31st day of March,
2009:

Nan T. Bassett
KIPP AND CHRISTIAN, P.C.
10 Exchange Place, 4th Floor
Salt Lake City, UT 84111
Attorney for Julie Ann Olson

Peggy Wheeler-Estrada