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Utah Supreme Court

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Mark A. Madsen; Attorney for Respondent.

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UTAH SUPREME COURT
BRIEF

BEFORE THE UTAH SUPREME COURT

GLEN J. ELLIS, Plaintiff & Appellant vs. UTAH STATE RETIREMENT BOARD, Defendant & Respondent.	)	APPELLANT'S REPLY BRIEF Priority 14-a SUPREME COURT CASE NO. 880-0333

APPELLANT'S REPLY BRIEF

Appealing from an Opinion
of the Court of Appeals
Dated July 6, 1988

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FILED
DEC 22 1988
Clerk, Supreme Court, Utah

BEFORE THE UTAH SUPREME COURT

GLEN J. ELLIS,	)	
	)	APPELLANT'S REPLY BRIEF
Plaintiff & Appellant	)	
	)	Priority 14-a
vs.	)	
	)	
UTAH STATE RETIREMENT BOARD,	)	SUPREME COURT
	)	CASE NO. 880-0333
Defendant & Respondent.	)	

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BEFORE THE UTAH SUPREME COURT

GLEN J. ELLIS, Plaintiff & Appellant vs. UTAH STATE RETIREMENT BOARD, Defendant & Respondent.	)	APPELLANT'S REPLY BRIEF SUPREME COURT CASE NO. 880-0333

REPLY

In Reply to the Respondent's Brief, the Appellant submits the following:

1. Despite the very clear language of the Appeals Court, denying the only grounds asserted by the Respondent (that there had been an implicit repeal of the 49-10-28 UCA Retirement Act, by passage of 49-9a-4 UCA,), and the correct finding that "Thus, in 1983 the Legislature, by clear express language provided that two disability retirement systems could co-exist in Utah.",). (Appeals Court Opinion, P3), Respondent insists on confusing the two systems.

2. The two systems had different definitions of what constituted "disability". The Appeals Court Opinion shows the same confusion, (see footnote, bottom of P. 3)

> "1. Ellis concedes he is not "totally disabled" as defined by the Disability Act and, therefore, does not qualify for disability benefits under this statutory scheme."

Appellant concedes that he does not meet the definition of <u>disability under the 1983 disability insurance program,</u> since it requires him to be unable to "perform any renumerative employment"; <u>Appellant does not concede that he fails to meet the definition of disability under the 1967 act</u>, "incapacity of a member to perform the usual duties of his employment".

3. It is Appellant's position that nothing in the 1983 act requires him to meet the 1983 definition in order to qualify for retirement under the 1967 Act, and that he can qualify for retirement under 49-10-28 at any time prior to it's repeal in 1987. Appellant applied for retirement in April, 1986, effective July 1, 1986. At that time the provisions of the 1967 Act were still in effect, and Appellant met all prerequisits of the 1967 act, necessary to retire under that act. As a matter of fact, the Board admits that Appellant will be retired under the parent Retirement Act (not under 49-9a) when he reaches age 60, because he opted out of the retirement system January 1, 1985, and froze his 20 years of service under 49-10-14 UCA., the only issue here, is whether he qualified for early medical retirement.

4. Counsel has argued that because Appellant opted out of the Retirement Act under 49-10-14 UCA (he was a department head without Civil Service Tenure) that somehow this deprives him of his right to early medical retirement. This is a smokescreen argument, having nothing to do with the issues. The Appellant froze his 20 years of vested retirement service effective January 1, 1985, but did not withdraw his contributions, or relinquish his rights to draw benefits when he reaches 60 years of age.

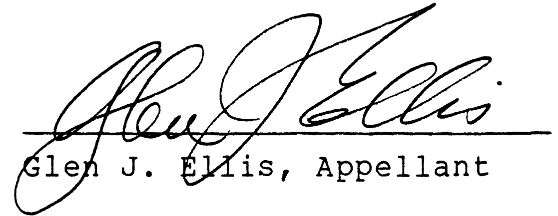
5. Counsel persists in arguing that the 1983 Act was a new program. That simply is not true. Section 49-10-28.5 UCA (1967) was an almost identical, optional Salary insurance. It,

like the 1983 Disability Act was not a 'vested right' portion of the Retirement Act. It was just a supplemental insurance program. There is no comparison between either insurance program described in 49-10-28.5 UCA, or the new 49-9a-4, 8, and the vested right program described in 49-10-28 UCA. The two insurance programs are more akin to Workmen's Compensation benefits than they are to the Retirement Act, which probably explains why they required "Total Disability" in terms of "inability to perform any renumerative employment". By contrast, 49-10-28 UCA, being part and parcel of the Retirement Act, is a fully contributed investment program, under which the participants were manditorily required to participate, they made contributions, their employer made contributions, and the Board was to invest those contributions and use the proceeds of investment to pay the benefits provided for those who by reason of illness or injury, were no longer able to do their former jobs.

That is why the Appellant has a Constitutional right to demand that he be retired, medically, under 49-10-28 UCA, which was still in full force and effect, fully funded, and available, up until the Legislature repealed it effective July 1, 1987.

6. The key word, necessary to an accurate interpretation of Legislative intent as to the meaning of 49-9a-8 UCA (1983) is "covered". It is obvious that the Legislature intended 49-9a-8 to cover total disabilities as defined in that chapter (49-9a) after the effective date of the legislation; by negative implication, if the disability was not "covered" by the new act, it had no effect, and since Appellant's disability was not covered by the new act, he still has recourse under the old act.

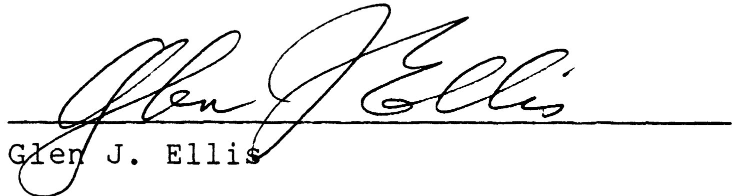
Respectfully submitted, this 16th day of December, 1988.



Glen J. Ellis, Appellant

NOTICE OF MAILING

Mailed 10 copies of the foregoing Reply Brief of Appellant, to the Clerk of the Supreme Court, State Capitol Building, SLC, Utah 84134; four copies being mailed to Mark A. Madsen, attorney for the Respondent, 540 East Second South, SLC, Utah 84102, postage prepaid this 20 day of December, 1988.



Glen J. Ellis