

COURT OF APPEALS, STATE OF COLORADO

101 West Colfax Avenue, Suite 800
Denver, CO 80202
303-861-1111

Appeal from the District Court, CITY AND COUNTY OF
DENVER, COLORADO, Case No. 2010CV1589
Honorable Judge Robert S. Hyatt

Plaintiff(s)-Appellant(s):

GARY R. JUSTUS, KATHLEEN HOPKINS, EUGENE
HALAAS, JR and ROBERT P. LAIRD, JR, on behalf of
themselves and those similarly situated,

v.

Defendant(s)/Appellee(s):

STATE OF COLORADO; PUBLIC EMPLOYEES'
RETIREMENT ASSOCIATION OF COLORADO;
GOVERNOR JOHN HICKENLOOPER, CAROLE WRIGHT
and MARYANN MOTZA, in their official capacities only.

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▲ COURT USE ONLY ▲

Case Number: _____

NOTICE OF APPEAL

Plaintiffs Gary R. Justus, Kathleen Hopkins, Eugene Halaas, Jr., and Robert Laird, Jr., on behalf of themselves and those similarly situated appeals Denver District Court Judge Robert S. Hyatt's June 20, 2011 Order denying Plaintiff's Motion for Partial Summary Judgment and his June 29, 2011 Order granting Defendant's Motion for Summary Judgment.

I. NATURE OF THE CASE

A. General Statement of Case

Plaintiffs challenge Senate Bill 10-001, which decreases the annual increases to their pensions that were part of their package of pension benefits earned during their careers in public service. Plaintiffs seek to represent a Class (collectively, "Retirees") that is comprised of approximately 50,000 Colorado public sector employees who have retired (or were eligible for immediate retirement in 2010). Retirees -- all members of the Public Employees Retirement Association of Colorado ("PERA") -- allege that they were promised certain specified pension benefits, including an annual cost-of-living adjustment ("COLA"), in exchange for their service. Retirees allege that they have already held up their end of the bargain by rendering years of service -- often at a lower wage than they could have earned in the private sector. Moreover, throughout their working lives, they made contributions to Colorado's Retirement Systems required by state law. Having done so, they reasonably expected that -- in exchange -- they would receive the promised pension benefits would sustain them throughout retirement.

Retirees allege that, under well-established Colorado case law, they acquired rights to fully vested pension benefits, including the annual COLA in effect under the law when they became eligible to retire. Police Pension and Relief Board of the City and County of Denver v.

McPhail, 139 Colo. 330 (1959), and Police Pension and Relief Bd. of City and County of Denver v. Bills, 148 Colo. 383 (1961).

In contravention of this Colorado case law, the Colorado Legislature in 2010 enacted Senate Bill 10-001, which reduced the promised pension benefits by eliminating COLA entirely for 2010 and reducing it in future years so that it could be as little as 0% and no more than 2.0%. By so doing, the Legislature diminished Plaintiffs' vested rights in violation of Contract Clause of the Colorado Constitution.

B. Judgment Being Appealed; Jurisdiction

Pursuant to C.A.R. 1(a), Plaintiffs appeal Denver District Court Judge Robert S. Hyatt's June 20, 2011, Order denying Plaintiff's Motion for Partial Summary Judgment and his June 29, 2011 Order granting Defendant's Motion for Summary Judgment.

The Court of Appeals has jurisdiction to hear this matter pursuant to Section 13-4-102 (1), C.R.S. (2006) and C.A.R. 4(a).

C. Issues Resolved Below

In denying Plaintiffs' Motion for Partial Summary Judgment and granting Defendants' Motion for Summary Judgment, Denver District Court resolved all issues regarding liability against all Plaintiffs. In light of the dismissal of all claims, the Denver District Court did not resolve the pending issue concerning class certification.

D. Multiple Claims or Parties

The Order resolved all claims for relief presented in the action and therefore is a final judgment pursuant to C.R.C.P. 54(b).

E. Date of Order

The Denver District Court Orders being appealed are dated June 20, 2011 (See Appendix A) and June 29, 2011 Order (See Appendix B).

F. Extensions

The trial court granted no extensions to file motions for reconsideration, nor were any requested.

G. Motions for Post-Trial Relief

As there was no trial, this is not applicable.

H. Denial of Motions for Post-Trial Relief

As there was no trial, this is not applicable.

I. Notice of Appeal

There have been no motions to extend the time for filing a Notice of Appeal.

II. ISSUES TO BE RAISED ON APPEAL

Plaintiffs anticipate that their appeal will focus on the following issues:

1) Whether the District Court erred in concluding that Plaintiffs have no contract right to any COLA and therefore wrongly denied Plaintiffs' Motion for Partial Summary Judgment and granted Defendants' Motion for Summary Judgment as to all of Plaintiffs' claims.

2) Whether the District Court erred in disregarding precedent, such as Police Pension and Relief Board of the City and County of Denver v. McPhail, 139 Colo. 330 (1959), and Police Pension and Relief Bd. of City and County of Denver v. Bills, 148 Colo. 383 (1961), which held on similar facts (1) that retirees had acquired contract rights to fully vested pension benefits,

including the annual COLA in effect under the law when they became eligible to retire, and (2) that these contract rights were protected constitutionally from reduction or elimination.

3) Whether the Denver District Court erroneously relied on In Re Estate of DeWitt, 54P.2d 849 (2002) and on the prior times that the Legislature modified the COLA amounts on benefits.

III. NECESSARY TRANSCRIPTS

Since this case was decided on summary judgment motions there was no transcript of any evidence taken before the District Court. .

IV. PRE-ARGUMENT CONFERENCE

No pre-argument conference is requested.

V. COUNSEL FOR THE PARTIES

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DATED this 25th day of July, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of July, 2011, a true and correct copy of **NOTICE OF APPEAL**, with attachments, was e-filed via LexisNexis™ File & Serve that will electronically notify and serve all registered, interested parties to the case including the following:

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