

Summary of SC95271, *Peggy Stevens McGraw and Samuel C. Jones, on behalf of themselves and all others similarly situated v. State of Missouri, Missouri State Employees' Retirement System, Missouri Commissioner of Administration Doug Nelson and Missouri State Treasurer Clint Zweifel*

Appeal from the Cole County circuit court, Judge Frank Conley

Argued and submitted December 14, 2015; opinion issued May 24, 2016

Attorneys: McGraw and Jones were represented by Matthew L. Dameron, Michael A. Williams and Eric L. Dirks of Williams Dirks Dameron LLC in Kansas City, (816) 876-2600. The state, state commissioner of administration and state treasurer were represented by Robert L. Presson of the attorney general's office in Jefferson City, (573) 751-3321. The retirement system was represented by Allen D. Allred and Jeffrey R. Fink of Thompson Coburn in St. Louis, (314) 552-6000.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Two retired Missouri judges appeal the circuit court's judgment dismissing their claims that both are entitled to additional compensation for July 2012 through June 2014 based on the results of litigation involving federal judges' compensation and that one is entitled to additional retirement benefits based on the additional compensation. In a unanimous per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri affirms the judgment. Under the 2010 compensation commission report and the relevant constitutional provisions, the report's compensation schedules take effect July 1, giving the legislature notice of the cost of judicial salaries when it prepares the annual state budget. The litigation resulting in increased federal judicial compensation was not finished until December 2013, and the federal judicial salaries, reset for 2014, were used in calculating the state judicial salaries that became effective July 1, 2014. The retired judges have not stated a claim for additional compensation, and the one seeking added retirement benefits is receiving properly calculated benefits.

Facts: The state constitution charges the Citizens' Commission on Compensation for Elected Officials with issuing a report by November 1 every two years establishing the compensation payable to officials including state judges. Since an amendment adopted by voters in November 2006, the constitution has provided that, if the legislature does not reject the whole report by a two-thirds majority vote by February 1, the report's compensation schedules take effect. In its 2010 report, the commission provided that, beginning with fiscal 2013 (beginning July 1, 2012), "each state judge's salary shall be indexed to the commensurate judicial position in the federal system." The report noted the amounts may change depending on the level of federal judicial compensation at the time the report's recommendations take effect. The legislature did not disapprove the 2010 report before the February 1, 2011, deadline, and so the report applies and represents the compensation for each affected person beginning July 1, 2011.

In 2012, the federal circuit court of appeals held in *Beer v. United States* that federal judges should be awarded back pay in accordance with compensation mandated by a 1989 federal act, which provides that federal judges' salaries be adjusted based on a particular index when general

federal employees receive cost of living adjustments. The court further held that Congress had improperly blocked adjustments promised to the judges. In 2013, the federal claims court determined the amount the affected federal judges would have received as salary had it been calculated correctly. The federal claims court later that year, in *Barker v. United States*, made the calculations effective as to all federal judges. The 2014 base salaries for federal judges subsequently were reset to reflect the federal claims court's calculations. In accordance with the 2010 Citizens' Commission report, Missouri judges received commensurate salary increases beginning July 1, 2014.

Two retired state judges subsequently filed a lawsuit regarding compensation. One, Peggy Stevens McGraw, had retired in October 2013; the other, Samuel C. Jones, had retired in November 2014. Specifically, they claimed they were entitled to have their compensation from July 1, 2012, through June 30, 2014, recalculated using the results of the federal litigation. Because retirement benefits are calculated using the salary received on the date of retirement, McGraw also claimed she was entitled to increased retirement benefits. The circuit court dismissed their claims with prejudice (so they could not be refiled). McGraw and Jones appeal.

AFFIRMED.

Court en banc holds: (1) McGraw and Jones have not stated a claim for additional salary. Both the 2010 report and the language of the constitution provide that the schedule for changes reflected in commission reports applies on the first day of July following the filing of the schedule unless the legislature does not disapprove the report by February 1. That any change in the 2010 report should be effective July 1 allows for any change in federal judicial salaries to be known to the legislature in a timely manner so it can take into account the resulting cost of state judicial salaries when it is preparing the state's annual budget. The state has applied the 2010 report consistently with the timing the report specifies. The federal judge salaries that McGraw and Jones seek to apply were not known until December 2013 when the *Beer* and *Baker* litigation ended. The federal judge salaries, reset for 2014, were used in calculating the state judicial salaries that became effective July 1, 2014.

(2) McGraw has not stated a claim for additional retirement benefits. Under section 476.530, RSMo 2000, a judge is entitled to receive retirement benefits calculated on the compensation in effect at the time of the judge's termination of employment as a judge. Because there is no additional salary due to McGraw as a result of the *Beer* and *Barker* litigation, there is no dispute the benefits she is receiving comply with section 476.530.