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THE HONORABLE HAROLD D. REED,* COLORADO COURT OF APPEALS

PHILIP G. DUFFORD**

THE EARLY YEARS

Harold Reed was born on March 4, 1923, in Pine Bluff, Arkansas, one of two identical twins so identical that even his mother could not tell them apart. The heavier baby was named Harry and the lighter baby was named Harold. To try and distinguish between the two, the parents put different colored rings on the babies; these often becoming mixed up, the parents went back to the distinction based on weight. At the age of one year, both of children became ill and one twin died. It was believed then that the deceased child was Harry, but there is no confirmation of that fact—and so the question remains whether Judge Reed is Harold or Harry Reed.

At three, the Judge's father died from tuberculosis, contracted during World War I. When his mother contracted the disease she moved to Denver with her child to a home south of Washington Park. Judge Reed was educated in the Denver Public Schools, attending Steele Elementary School, Byers Junior High and South High School, where he graduated from in 1942. He then enrolled at the University of Denver but six months later enlisted in the Army Air Force as a meteorology cadet and was transferred to Hamilton College in upstate New York. At the program's termination in 1944, Reed went from the rank of cadet to the rank of private and transferred to the South Pacific, where he served in New Guinea, the Admiralty Islands, Biak and the Islands of Leyte and Luzon in the Philippines.

THE FAMILY

Judge Reed and his wife, Betty, were married in 1962. They have one daughter, Holly, now 29 years old, who lives in Cozumel, Mexico, where she and her fiance run a deep sea diving school and underwater photography classes and also operate a camera shop. Judge Reed's hobbies throughout his adult life have been hunting and fishing, although those activities have been somewhat curtailed recently because of an injury to his hip.

THE LAWYER

Reed returned to the University of Denver in the spring of 1946 and graduated in 1948 with a Bachelor of Science in Law and a Bachelor of

* Judge Reed will retire in January 1994.

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Laws (the equivalent of today's Juris Doctor). The Carnegie Foundation awarded Reed a graduate fellowship and he enrolled in a government management program, for training either as an advisor/assistant to a state governor or as a city manager. Upon completion of that program, Reed received a Master's Degree in 1950.

While enrolled in his graduate fellowship, Reed began practicing law and upon receipt of his Master's Degree, he opened his office as a sole practitioner in Denver. His practice consisted primarily of personal injury work and frequently worked as "of counsel" with other attorneys with appellate matters pending before both the Colorado Supreme Court and the United States Supreme Court. During his practice, he handled the trials or appeals of several significant cases, including the strict liability case of *Hügel v. General Motors Corp.*¹ In *Mile High Fence Co. v. Radovich*,² one of the early decisions of the reactivated Colorado Court of Appeals, Judge Reed was counsel for the plaintiff there and in the Colorado Supreme Court. He was trial and appellate counsel in both *City of Littleton v. Employers Fire Insurance Co.*³ and *Miller v. First National Bank of Englewood*.⁴

THE JURIST

In 1976, then Governor Lamm appointed Reed to the district court bench for the City and County of Denver, where he sat until his appointment to the Colorado Court of Appeals in 1988. After his appointment to the district court bench, Judge Reed acted as a roving judge and handled various cases out of different divisions of the district court. Soon after he was appointed to that capacity, however, Judge Robert McLain died and his docket was transferred to Judge Reed. At the time of his death, Judge McLain was assigned to the civil division, and it was that litigation that Judge Reed assumed. Reed served in the domestic relations division, among other divisions. He still feels that the domestic relations court is the most underrated of all the divisions in our court system and that it should receive the best talent available. As he put it, "The cases that are decided in those divisions affect many lives for a long time, and the effect upon those lives is more significant than the money matters involved in the other civil cases."

While on the district bench, Judge Reed received the nationally known "Batey case."⁵ In this case, a child was stolen by his mother in California and brought to Colorado because the father, who had been given temporary custody of the child, was a homosexual. Two years later, police located and arrested the mother in Colorado, where she was charged with kidnapping and the father filed several motions for custody. This case came before Judge Reed, who ruled that Colorado had temporary and

1. 525 P.2d 1198 (Colo. Ct. App. 1974) *rev'd* 544 P.2d 983, (Colo. 1975).

2. 474 P.2d 796 (Colo. Ct. App. 1970), *aff'd*, 489 P.2d 308 (Colo. 1971).

3. 453 P.2d 810 (Colo. 1969).

4. 435 P.2d 899 (Colo. 1968).

5. See, e.g., *Fugitive Boy to Surrender*, Wash. Post, Apr. 24, 1984, at A4; *Son of Gay Dad Turns Himself In*, PHILADELPHIA DAILY NEWS, Apr. 24, 1984, National, at 6.

emergency jurisdiction over the child. The custodies of both parents were terminated and the child was returned to California. A California court then determined the custody question.⁶

Judge Reed also heard several other interesting cases as a trial judge. In *City and County of Denver v. District Court*⁷ the judge considered the so-called "Christmas Eve massacre" of Denver firemen; *Rathke v. MacFarland*⁸ denied a preliminary injunction for a dealer in precious metals who was affected by the Precious Metal Dealers Statute.⁹ When the Eighth Avenue viaduct needed to be rebuilt and the City of Denver ordered various railroad companies to pay for the rebuilding, Judge Reed found that the city was acting without authority and prohibited the city from proceeding.¹⁰ In *Lampe v. Presbyterian Medical Center*,¹¹ Judge Reed sustained terminable-at-will employment. Judge Reed also analyzed whether a discharged employee could recover damages for mental anguish resulting from his discharge.¹² In a decision of great interest to the local ski industry, Judge Reed rejected an extra-hazardous standard of care for ski operations.¹³ Another case decided the liability of tavern owners when one intoxicated customer is injured in an automobile accident where another intoxicated customer is the driver.¹⁴

During the 1970s, three cases were filed in Judge Reed's court by myself and Greg Ruegsegger acting under appointment from the Colorado General Assembly. These cases challenged the constitutionality of actions taken by then Governor Richard Lamm in vetoing line items and footnotes in the legislative appropriation bill,¹⁵ his procedure of transferring funds between different state departments in contravention of the appropriation bill¹⁶ and his supervision and use of federal block grants to the state.¹⁷ All were highly complex constitutional cases, and numerous exhibits and witnesses were presented during the trial. It was during the trial of these three cases that both Greg Ruegsegger and myself came to admire and respect Judge Reed, not only for his outstanding rulings on evidentiary and procedural questions, but also because of his wonderful judicial temperament and the courtesy he extended to legal counsel and witnesses. I still feel that the trial of those cases in Judge Reed's court was

6. See *People v. Batey*, 228 Cal Rptr. 787 (Cal. Ct. App. 1986), *cert denied*, 480 U.S. 932 (1987). See also, e.g., *Batey in California Awaiting Custody Decision*, UPI, May 2, 1984, available in LEXIS, Nexis Library, Omni File; *Gay Father Wins Fight For Custody*, ARIZ. REPUBLIC, June 30, 1986, at D8.

7. 582 P.2d 678 (Colo. 1978).

8. 648 P.2d 648 (Colo. 1982).

9. Colo. Rev. Stat. § 18-16-101 to -110 (1986).

10. *Denver & Rio Grande Western R.R. Co. v. Denver*, 673 P.2d 354 (Colo. 1983).

11. 590 P.2d 513 (Colo. Ct. App. 1978).

12. *Adams v. Frontier Airlines Fed. Credit Union*, 691 P.2d 352 (Colo. Ct. App. 1984).

13. *Mannhard v. Clear Creek Skiing Corp.*, 682 P.2d 64 (Colo. Ct. App. 1983).

14. *Thomas v. Pete's Satire, Inc.*, 717 P.2d 509 (Colo. Ct. App. 1985).

15. *Colorado General Assembly v. Lamm*, 704 P.2d 1371 (Colo. 1985); House Bill No. 1284 (1982). Ch. 1, § 1, 1982 Colo. Sess. Laws 1.

16. *Colorado General Assembly v. Lamm*, 700 P.2d 508 (Colo. 1985).

17. *Colorado General Assembly v. Lamm*, 738 P.2d 1156 (Colo. 1987).

one of the most wonderful and reassuring experiences of my career as a lawyer.

In July 1988, Judge Reed was appointed by Governor Romer to the Colorado Court of Appeals. Since that time, Judge Reed has either written or participated in several significant and precedent-setting decisions.¹⁸ From a philosophical and jurisprudential standpoint, Judge Reed has been and is a conservative. He feels that appellate law must be clear and short enough to be read and that it must set forth a truly usable rule. Judge Reed feels that if precedent exists, that precedent should be adopted in any case, without a long discussion as to why the rule is right. Where precedent exists, it is a waste of time and effort to reinvent the wheel.

Judge Reed does miss the contact he once had with the practicing bar. He sees progress in that the judges on the Colorado Court of Appeals are developing ways in which they can have more contact with the practicing bar and not show any bias or favoritism to any segment of that bar.

18. *Harrison v. Smith*, 821 P.2d 832 (Colo. Ct. App. 1991) (when does a claim become groundless because of a lawyer's dereliction); *McGee v. Hyatt Legal Serv.*, 813 P.2d 754 (Colo. Ct. App. 1990) (scope of lawyer's duty to his client and her child in dissolution of marriage); *Martin v. Montezuma-Cortez School Dist. RE-1*, 809 P.2d 1010 (Colo. Ct. App. 1990) (lawfulness of strike by state employees and damages recoverable) *aff'd in part and rev'd in part*, Nos. 90SC562, 90SC568, 1992 WL 303274 (Colo. Oct. 26, 1992); *Williams v. Farmers Group*, 781 P.2d 156 (Colo. Ct. App. 1989) (whether personal injury protection is the exclusive coverage and excludes claims of bad faith); *In re Marriage of Vogt*, 773 P.2d 631 (Colo. Ct. App. 1989) (use of "reserve jurisdiction method" for marital dissolution division of contingent fees).