AJM

Topic:
JUDICIAL IMMUNITY
FROM CIVIL LIABILITY

This issue distributed to:

District and superior
court judges

ADMINISTRATION OF JUSTICE MEMORANDA

INSTITUTE OF GOVERNMENT LIBRARY
University of North Carolina
at Chapel Hill

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
University of North Carolina at Chapel Hill

MAY 1978 No. 06/78

JUDICIAL IMMUNITY FROM CIVIL LIABILITY

Stump v. Strickland, 46 U. S. Law Week 4253 (March 28, 1978)

C. E. Hinsdale

In 1971, in Indiana, Mrs. McFarlin, the mother of Linda Spitman, age 15, petitioned the Dekalb County Circuit Court (a court of general jurisdiction) to approve a tubal ligation on Linda. The petition, which has been prepared by an attorney in the form of an affidavit, alleged that Linda was "somewhat retarded," although she had been promoted annually with her class in public school. It further alleged that Linda had been staying overnight with young men and that a ligation was necessary to prevent "unfortunate circumstances." Judge Stump of the Circuit Court approved the petition in an ex parte proceeding the day it was presented. No notice was given to Linda, no guardian ad litem provided, no hearing conducted. Neither the petition nor the approving order was docketed or filed with the clerk's office. Linda was told that she was to have an appendectomy. A tubal ligation was performed within a week.

Two years later Linda married Leo Sparkman. Her failure to become pregnant caused her to discover the true nature of her operation. Thereafter she filed suit against Judge Stump (and other parties) alleging a violation of her constitutional rights under the Civil Rights Act of 1871 (42 U.S. Code 1983). The District Court for the Northern District of Indiana held that the judge had "absolute" judicial immunity for his act and dismissed the suit.[1] The Court of Appeals for the Seventh Circuit unanimously reversed [Sparkman v. McFarlin, 552 F.2d 172 (CCA 7, 1977)], holding that Judge Stump clearly had no jurisdiction. The U.S. Supreme Court held 5-3 that the judge did have jurisdiction and was immune from civil liability

---

1. The doctrine of judicial immunity was held applicable to civil rights cases in Pierson v. Ray, 386 U.S. 547 (1967), Justice Douglas dissenting. The decision has been criticized on the grounds that congressional intent clearly was to abolish all immunity in civil rights cases.

This publication is issued occasionally by the Institute of Government. An issue is distributed to those of the following groups to whom its subject is of interest: sheriffs, general law enforcement officers, special-purpose law enforcement officers, police attorneys, judges, clerks, district attorneys, public defenders, adult correction officers, juvenile correction personnel, jailers, and criminal justice trainers. The upper left-hand corner lists those to whom this issue was distributed and indicates a topic heading for this issue, to be used in filing. Comments, suggestions for future issues, and additions or changes to the mailing lists should be sent to: Editor, Administration of Justice Memoranda, Institute of Government, P.O. Box 990, Chapel Hill, N.C. 27514.

for his judicial acts, even if they were malicious or corrupt [Stump v. Strickland, 46 L.W. 4253 (March 28, 1978)].

All three courts relied heavily on Bradley v. Fisher, 80 U.S. 646 (13 Wall. 335, 1872). Bradley was an attorney who sued Judge Fisher for striking his name from the roll of attorneys authorized to practice in the District of Columbia Criminal Court for allegedly threatening the judge with "personal chastisement" during the trial of John Surratt.[2] In Bradley, the U.S. Supreme Court found that the trial judge was within his jurisdiction in disbarring the attorney but held that for such an act the judge was civilly immune, even if he acted with "...partiality, or maliciously, or corruptly, or arbitrarily, or oppressively...." The Court felt that the people had a paramount interest in the judge's independence--his freedom to decide issues on the merits without fear of personal consequences--that transcended the equities of a particular case. The Court found abundant support for its position in the common law. If a judge exceeds his jurisdiction, it said, he is still protected, and regardless of his motives. Only in "... the clear absence of all jurisdiction over the subject matter" will liability lie.[3] The decision set the stage in the appellate courts for a debate on the breadth of "jurisdiction" enjoyed by a judge of a court of general jurisdiction.

The Court of Appeals for the Seventh Circuit could find no statutory or common law authority in an Indiana Circuit Court judge to order sterilization. It found the Indiana statute that conferred jurisdiction over "... all cases at law and in equity..." to a circuit judge to be insufficiently specific, with nothing to indicate that the sterilization in issue was to be regarded as a "case." It further stated that an Indiana statute authorizing sterilization of certain institutionalized persons, pursuant to various administrative safeguards, negated any judicial authority over sterilizations: Its survey of the case law of various states could find none authorizing a judge to order sterilization in the absence of a specific statute.[4]

The Supreme Court, citing language in Bradley that the scope of

---

2. An interesting sidelight: John Surratt was being tried for the murder of Abraham Lincoln. Eight other defendants, including Surratt's mother, were convicted by military commission. (Four were hung, four were imprisoned.) Surratt escaped to Italy but was later captured and tried by a regular criminal court. His jury could not agree, and he successfully pleaded the statute of limitations at a second trial. The trigger man, John Wilkes Booth, escaped to Virginia, where he was captured and killed. Judge Fisher disciplined Bradley immediately after the jury was discharged and the court had adjourned for the day, although the misconduct had occurred earlier in the trial.

Another interesting point: the Supreme Court ruled that Judge Fisher should have given Bradley a hearing, rather than summarily disbarring him, since he had not acted at the time of the misconduct. This has no bearing on the jurisdiction and immunity issues, but the ruling is reflected in North Carolina's 1978 revision of the law of contempt.

3. The decision on jurisdiction and immunity was unanimous, but two justices dissented on the issue of immunity for malicious acts.

4. The Circuit Court was also incensed by the gross lack of due process in the proceedings before Judge Stump, but the Supreme Court dismissed this with the comment that the issue was one of jurisdiction, and lack of due process was irrelevant to this issue.

a judge's jurisdiction must be construed broadly when the issue is his immunity, sided with the trial court and reversed the Circuit Court. It found the Indiana grant of jurisdiction ("... all cases in law and in equity...") broad enough to include the judge's assumption of jurisdiction to approve sterilizations in the absence of any Indiana statute specifically forbidding it. It said that, in determining whether a judge's act is a "judicial act" to which immunity attaches, two considerations are important: (1) Was the act a "function normally performed by a judge?" (2) Did the parties deal with the judge in his judicial capacity? Certainly in this case the petitioner (Linda's mother) dealt with the judge in his judicial capacity. Open to argument is the question whether signing a petition for sterilization is an act normally performed by a judge. The Court purported to settle this with the sweeping statement that state judges with general jurisdiction not infrequently are called on in their official capacities to approve petitions relating to the affairs of minors as, for example, to settle a minor's claim.

Mr. Justice Stewart, joined by Justices Marshall and Powell, wrote a vigorous and colorful dissent. Each concurred fully in the judicial immunity doctrine laid down in Bradley but limited the doctrine to "judicial acts" and found that "...what Judge Stump did...was beyond the pale of anything that could sensibly be called a judicial act." They strongly disagreed with the majority that approving a sterilization proceeding was a function normally performed by a judge, since there was no reason to believe that such an act has ever been performed by any other Indiana judge, either before or since. Further, they pointed out that (1) a parent in Indiana, as elsewhere, can obtain surgical treatment for a child without the intervention of a judge, and (2) in the one statutorily authorized sterilization procedure (for institutionalized persons), a judge was not called for except on appeal. They pointed out, also, that although Linda's mother might have sought out the judge because he was a judge, her illusions as to a judge's power could not invest him with that power. ("A judge's approval of a mother's petition to lock her daughter in the attic would hardly be a judicial act simply because the mother has submitted her petition to the judge in his official capacity.") Nor, they argued, does the judge's conduct become a judicial act simply because he says so. ("A judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity.") Justice Stewart concluded that there was "no case" within the meaning of the Indiana jurisdictional statute, no litigants, no possible appeal, and not even the "...pretext of principled decision making." He found Judge Stump's conduct lawless and said that the doctrine of judicial immunity should be restricted so as to discourage this kind of conduct.

Judge Powell penned a separate dissent in which he emphasized that an appeal to correct the damage was not possible in this case, as it was in Bradley and is in most cases of jurisdictional error, and hence the plaintiff was without any recourse if the doctrine of judicial immunity was affirmed.

The case is noteworthy not merely for its affirmation of the doctrine of judicial immunity in an age when more civil suits are being filed against judges than ever before but also for its extremely broad interpretation of jurisdiction, or "judicial act."

North Carolina, relying on the common law, first approved the judicial

immunity principle in 1839 in Cunningham v. Dillard, 20 N.C. 486, in which a justice of the peace was sued for knowingly taking insufficient security on appeal. The Court adopted even the malicious-motive extension of the doctrine. In 1860, in Furr v. Moss, 52 N.C. 525, another case involving a magistrate (who was sued for false imprisonment for ordering an unruly spectator tied up while he was issuing a warrant), the Court affirmed the doctrine, although apparently not as to malicious acts.

Fuquay Springs v. Rowland, 239 N.C. 299 (1954), is apparently the first and only North Carolina immunity case involving a judge. The town of Fuquay Springs sued its recorder's court judge over what items should be included in a criminal bill of costs. The Supreme Court extended the doctrine to judges with one sentence: "A judge of a court of this State is not subject to civil action for errors commited in the discharge of his official duties." No authorities were cited.

The latest North Carolina case (again involving a magistrate, this time being sued for issuance of a warrant) is Foust v. Hughes, 21 N.C. App. 268 (1974). The court quoted from Fuquay Springs, supra, and then added the "malicious acts" extension of the doctrine, citing as authority for the latter Pierson v. Ray,[5] decided by the U.S. Supreme Court in 1967.

Stump fits very comfortably with the North Carolina case law. The immunity principle is well established in this state and, with the encouragement of the U.S. Supreme Court, will no doubt continue to be the law, even though North Carolina has no statute equivalent to the federal Civil Rights Act of 1871 to encourage suits. A trial judge (including a magistrate) need have no fears, if he acts even colorably within his authority, about whether he is fully protected. The range of protection probably exceeds even this, but it is not prudent to test it. After all, the North Carolina court has never been faced with a factual situation as "far out" as Stump.[6]

GENERAL REFERENCES

46 Am. Jur. 2d, Judges, secs. 73-83.

Kates, "Immunity of State Judges Under the Federal Civil Rights Acts: Pierson v. Ray Reconsidered," 65 Nw. U.L. Rev. 615 (1970).

Stafford, An Overview of Judicial Immunity, (Research Essay Series No. E001, National Center for State Courts 1977).

Comment, "Liability of Judicial Officers Under Section 1983," 79 Yale L.J. 322 (1969).

---

5. 386 U.S. 547 (1967).

6. A few cases from various jurisdictions hold that a judge, at least a judge of a court of limited jurisdiction, may be liable for acts done in bad faith in an administrative or ministerial capacity. Indeed, there are dicta to this effect in Cunningham and Furr, cited in the text. There are no North Carolina authorities in point, however. Other authorities hold that all acts of a judge of a court of record are judicial. See 46 Am. Jur. 2, Judges, sec. 83.