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Party Not Otherwise a Federal-Court Defendant May Not Be a 'Pendent Party' in a § 1983 Claim

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Party Not Otherwise a Federal-Court Defendant May Not Be a 'Pendent Party' in a § 1983 Claim

In *Aldinger v. Howard*,[1] the U.S. Supreme Court held that a party not already in federal court under a federal claim may not be brought into federal court under a state claim, even though the plaintiff's state claim has a "common nucleus of operative fact" with the plaintiff's federal claim against another party. This limitation on "pendant party" jurisdiction, however, was restricted to state claims asserted to be "pendent" to 42 U.S.C.A. § 1983[2] and its jurisdictional corollary, 28 U.S.C.A. § 1343(3).[3]

Petitioner Aldinger had a civil-rights claim under § 1983 against Respondent Howard, the treasurer of Spokane County, who had fired Aldinger for "living with [her] boy friend."[4] She also sued the county itself, not under § 1983, which she admitted did not apply to governments, but under a state law. Aldinger contended that the U.S. District Court had pendent jurisdiction over her state claim against the county, because that claim and her § 1983 claim against Howard had a "common nucleus of operative fact."[5] The district judge dismissed the action against the county, since the county was not a "person" under § 1983 and since there was no other independent basis of federal jurisdiction. The Court of Appeals for the Ninth Circuit affirmed.[6]

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1. ___ U.S. ___, 96 S. Ct. 2413 (1976).

2. 42 U.S.C.A. § 1983 (1974) reads: "Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

3. 28 U.S.C.A. § 1343 (1976) reads in part: "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of any citizens or of all persons within the jurisdiction of the United States . . . ."

4. The Washington state statute allowed a county officer to "revoke each appointment at pleasure." WASH. REV. CODE § 36.16.070 (1973). Aldinger might have brought Spokane County into federal court under 28 U.S.C.A. § 1331 by alleging arbitrary or discriminatory actions and denial of a hearing, in violation of the Fourteenth Amendment, and avoided the pendent-party problem altogether. Aldinger apparently did not press the argument in the lower courts, and the Supreme Court said that possibility was "not before us." 96 S. Ct. at 2415-2416 n. 3.

5. The language is from the test established in United Mine Workers v. Gibbs, 383 U.S. 715 (1966), discussed below.

6. 513 F.2d 1257 (1975). That decision was based on Moor v. County of Alameda, 411 U.S. 693 (1973). *See also* City of Kenosha v. Bruno, 412 U.S. 507 (1973).

The concept of "pendent party" jurisdiction, on which Aldinger based her jurisdiction argument, is in part the product of merging the principles underlying pendent jurisdiction and those underlying ancillary jurisdiction.[7] Under the doctrine of ancillary jurisdiction, a federal court, once it has subject jurisdiction, may decide non-federal issues if a forum is needed to protect parties whose interests will be affected by the decision.[8] The Supreme Court expanded the doctrine in *Moore v. New York Cotton Exchange*[9] when it held that federal courts have the power to decide a compulsory counterclaim because by definition it arises out of the same transaction as the plaintiff's federal claim. The doctrine normally is used to carry out the liberal provisions for joinder of claims and joinder of parties under the Federal Rules of Civil Procedure.[10] Pendent jurisdiction allows a plaintiff to tack state claims onto a federal claim and have the federal court resolve all the issues.[11] *United Mine Workers v. Gibbs*,[12] upon which the Court in *Aldinger* relied heavily, established the criteria for pendent jurisdiction when the Court said the federal and non-federal claims must be based on a common nucleus of operative fact before a defendant already in federal court can be compelled to answer non-federal claims.[13]

Both federal courts and commentators are divided over the question whether the "common nucleus" may be the basis for including as a party one over whom no independent federal jurisdiction exists.[14] The authorities favoring this "pendent party" jurisdiction contend that such an expansion of federal jurisdiction over claims and parties is both logical and practical in light of *Gibbs*;[15] it would produce fairer, more realistic and more economical decisions,[16] and is warranted by the expansion, through the Fed-

7. *See* Comment, *Pendent and Ancillary Jurisdiction, Towards a Synthesis of Two Doctrines*, 22 U.C.L.A. L. REV. 1263 (1975).

8. C. WRIGHT, THE LAW OF FEDERAL COURTS § 9 (2d ed. 1970). The doctrine is based on Freeman v. Howe, 65 U.S. (24 How.) 450 (1860), and Fulton Bank v. Hozier, 267 U.S. 276 (1925). *See also* Stewart v. Dunham, 115 U.S. 61 (1885), and Supreme Tribe of Ben-Hur v. Cauble, 255 U.S. 356 (1921).

9. 270 U.S. 593 (1926).

10. C. WRIGHT, THE LAW OF FEDERAL COURTS § 9 (2d ed. 1970).

11. The leading case is Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 737 (1824).

12. 383 U.S. 715 (1966).

13. *Id.* at 725.

14. *See* Comment, *Pendent and Ancillary Jurisdiction, Towards a Synthesis of Two Doctrines*, 22 U.C.L.A. L. REV. 1263 (1975); Reed v. Philadelphia Housing Auth., 372 F. Supp. 686 (E.D. Pa. 1974). *See also:* Baker, *Toward a Relaxed View of Federal Ancillary and Pendent Jurisdiction*, 33 U. PITT. L. REV. 759 (1972).

15. These proponents urge that *Gibbs* be read as emphasizing the broadened use of pendent jurisdiction and should not be limited to its facts. *See* Comment, *Pendent and Ancillary Jurisdiction, Towards a Synthesis of Two Doctrines*, 22 U.C.L.A. L. REV. at 1279.

16. These are the basic considerations in exercising pendent jurisdiction as set forth in *Gibbs*, 383 U.S. at 726.

eral Rules, of the types of claims and parties that may be joined in federal court. The authorities opposing pendent-party jurisdiction argue that the doctrine is not consistent with *Gibbs* and is an illogical extension of jurisdictional power granted federal courts in article III, § 2 of the U.S. Constitution.

Before *Gibbs*, the Supreme Court in *Hurn v. Oursler*[17] held that the federal courts have jurisdiction to decide a state claim along with a federal copyright-infringement claim because the claims were "two distinct grounds in support of a single cause of action."[18] The Court said the two claims rested on identical facts and therefore were "little more than the equivalent of different epithets to characterize the same group of circumstances."[19] *Gibbs* contained "two separate and distinct causes of action,"[20] but the Court still allowed pendent jurisdiction. It rejected the *Hurn* "cause of action" approach and adopted a more flexible approach.

In *Gibbs*, the respondent sued the United Mine Workers union under both a federal statute and state common law. Both claims arose out of the alleged employment and contractual relations with the owner of a coal mine. Although diversity was absent, the Court held that Gibbs could assert his state claims as well as his federal claims against the petitioner under the doctrine of pendent jurisdiction. The Court said that the power to hear the case existed when the federal claim was of sufficient substance and the state claim was derived from a common nucleus of operative fact in such a manner that the entire action comprised but one constitutional "case."[21] The Court said, however, that judges may use their discretion in exercising pendent jurisdiction by considering "judicial economy, convenience and fairness to litigants."[22]

In *Aldinger*, the Supreme Court held that pendent-party jurisdiction over a non-federal defendant on a state-law claim depends on the jurisdictional statute on which the plaintiff's federal claim is based.[23] A federal

17. 289 U.S. 238 (1933).

18. 289 U.S. at 246, *quoted at* 96 S. Ct. at 2417.

19. *Id.*

20. *Id.*

21. *Gibbs*, 383 U.S. at 725, n. 12. "One constitutional 'case'" refers to jurisdiction only, and for this purpose the federal or state character of the plaintiff's claim may be ignored. That principle is based on Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 737 (1824), in which Chief Justice Marshall wrote: "[W]hen a question to which the judicial power of the Union is extended by the constitution forms an ingredient of the original cause, it is in the power of congress to give the circuit courts jurisdiction of that cause, although other questions of fact or law may be involved in it." 22 U.S. at 823. Although Congress may not grant federal courts more power than article III of the Constitution allows, article III refers to "cases." Federal courts therefore are not limited to the "federal question" raised in a case; they may decide state claims necessary to the resolution of a plaintiff's federal claim.

22. *Id.* at 726. The court also said that in deciding the question of discretion, pendent jurisdiction might be particularly applicable if the state claim is closely tied to questions of federal policy. *Id.* at 727.

23. 96 S. Ct. at 2421.

court must determine whether Congress intended to grant pendent-party jurisdiction as an attachment to the particular type of federal claim. Congress had excluded counties from federal jurisdiction in § 1983 claims, the Court said, so a federal court could not logically apply pendent jurisdiction to bring the county back within federal jurisdiction.

The Court found it unnecessary to formulate any general jurisdictional rule. It instead considered whether the rationale of *Gibbs* could be extended to pendent-party jurisdiction. The Court determined in *Gibbs* that Congress had said nothing about the scope of the word "cases" in article III that would serve as a guide to whether a federal court could hear a parallel non-federal claim against a defendant already properly in federal court. Since Congress had not acted, the courts were free to fashion their own rule allowing such claims, according to the *Gibbs* analysis. The Court in *Aldinger*, however, found that including a *new* defendant without an independent basis of federal jurisdiction would run counter to the principle that federal courts have limited jurisdiction marked out by Congress. Before such a party could be joined, the federal court must determine that Congress had not expressly or implicitly prohibited such jurisdiction against that party.

The Court distinguished *Gibbs* on the basis of statutory jurisdictional considerations in holding that pendent-party jurisdiction does not confer federal jurisdiction over a county to answer a § 1983 claim. In *Gibbs*, the Court rejected the "unnecessarily grudging"[24] approach to parallel claims[25] in *Hurn* and developed clear guidelines for the application of pendent jurisdiction in the federal courts. In *Aldinger*, however, the Court established for pendent-party jurisdiction what amounted to little more than a nebulous standard.[26] The Court explicitly refrained from resolving the confusion about the applicability of pendent-party jurisdiction and instead required a subjective analysis of congressional intent before a defendant who is not otherwise subject to federal jurisdiction may be reached by pendent-party jurisdiction.[27]

The Court could have been saying that pendent-party jurisdiction may not be used to reach a type of defendant excluded from the substantive federal claim to which the state-claim jurisdiction would be attached. In Aldinger's case, § 1983 creates a claim against a "person," not a government, so a government, under this reading of *Aldinger*, cannot be reached

24. 383 U.S. at 725.

25. A federal claim and a state claim asserted against the same defendant are said to be "parallel."

26. *See* 96 S. Ct. at 2424 (Brennan, J., dissenting). The dissenting opinion, joined by Justices Marshall and Blackmun, argues that all cases in which pendent-party jurisdiction is asserted will, by definition, refer to a party about which Congress has impliedly addressed itself by not expressly granting jurisdiction over that party.

27. The Court in *Gibbs* said nothing of this congressional-intent analysis; it considered the limits of article III.

as a pendent party. If that was indeed the holding, the Court muddled it by limiting it to § 1983. The Court should have been more attentive to the thought behind *Gibbs* and the Marshall-era case, *Osborn v. Bank of the United States*:[28] article III allows federal jurisdiction over "cases," not merely federal issues, and a federal court has the power to decide all issues, including state issues, in those "cases."

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28. 22 U.S. (9 Wheat.) 737 (1824).