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03-18-1981 Correspondence from Rehnquist to White

William H. Rehnquist
US Supreme Court Justice

JD

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 18, 1981

Re: No. 79-6853 Webb v. Webb

Dear Byron:

As you know, we have discussed with one another the possible jurisdictional problems in this case, and I would be the first to admit that it is an extremely "close call" if we were to say that the Court has jurisdiction under 28 U.S.C. § 1257, which I believe is the only general statute giving us jurisdiction over "final judgments or decrees rendered by the highest court of a State in which a decision could be had." I am troubled by the fact that the respondent did not raise this point in his memorandum in opposition to certiorari, not because a failure to do so would prevent us from noting it, but because his having done so might have alerted us to the problem.

While we are on the subject of cases raising jurisdictional questions which are set for argument next week, I would call your attention to two additional candidates for some sort of "scrutiny": Flynt v. Ohio, No. 80-420, and Beltran v. Myers, No. 80-5303.

In Flynt, the claim is that the Supreme Court of Ohio erred in upholding the reversal of a state court's finding of discriminatory and selective prosecution. The finding had been made prior to trial, and the Ohio Supreme Court simply remanded the case for trial. Flynt obviously has not been tried on the substantive counts with which he is charged, and therefore could not assert a § 1257 counterpart of Abney v. United States, 431 U.S. 651 (1977), as a basis for evading the "final judgment or decree" rule evolved for federal courts in connection with double jeopardy. Although in the federal system there are a number of additional means for obtaining review other than the one contained in § 1257, it appears that Flynt would fall under cases such as United States v. McDonald, 435 U.S. 850 (1978), where we held that

a defendant may not, before trial, appeal a federal District Court's order denying his motion to dismiss an indictment because of an alleged violation of his Sixth Amendment right to a speedy trial.

A somewhat closer question is presented in Beltran, No. 80-5303. I think, however, there may exist a jurisdictional problem with respect to the dollar amount involved. The Court of Appeals recognized something of a problem in its opinion where it said:

> "The District Court concluded that it has jurisdiction under 28 U.S.C. § 1343(3) and (4) (civil rights jurisdiction) and under 28 U.S.C. §1331 (federal question jurisdiction). It is unclear whether jurisdiction was properly invoked under 28 U.S.C. § 1343. See Chapman v. Houston Welfare Rights Orig., [sic], 441 U.S. 600 (1979); Doe v. Kline, 559 F.2d 338 (9th Cir. 1979). Nevertheless, the amount in controversy exceeds $10,000 and so the District Court did clearly have federal question jurisdiction (28 U.S.C. § 1331)." Jt. App. at 61, n.6.

The petitioners acknowledge in their brief that with respect to petitioner Beltran "The Record, which reflects only the period up to the filing of plaintiff's summary judgment motion, indicates that by early 1979, her unpaid bills to the nursing home were in excess of $4,000." Brief of Petitioners at 9, n.8. Petitioners argue, however, that for the period of ineligibility from September, 1978 through February, 1980, Beltran's unpaid bills to the nursing home amounted to nearly $15,000. Unfortunately, this figure cannot be supported by the record.

Beltran became a party to this litigation when the District Court granted a motion to intervene which she filed along with Enosinsio Manahan. There had been pending in the District Court litigation filed by Rossye Dawson raising the identical issue. Dawson has since died. Presumably, Manahan is still alive, but it is not clear from the record that his claim can provide the requisite jurisdictional amount. In the complaint filed by Beltran and Manahan, they allege that Manahan has an outstanding balance owed to the nursing home in the amount of $8,944.93. Jt. App. at 8. This complaint was filed after the administrative proceedings in which the Director of the California Dept. of Health Services upheld the regulation in question and

concluded that as a result of Manahan's transfer of assets there was an outstanding balance of $15,792.15. Jt. App. 36. Although the matter is somewhat confusing, I do not believe this latter figure is intended to mean that Manahan was indebted in that amount. Even if that were the case, I think we are still bound by the later assertions contained in Petitioners' complaint. Because it my understanding that under Zahn v. International Paper Co., 414 U.S. 291 (1973), claims as to jurisdictional amount may not be aggregated under either § 1331 or § 1332, 414 U.S. at 295, I think we may have a problem here, too.

Sincerely,

Mr. Justice White

Copies to the Conference