

2-11-1987

## 02-11-1987 Preliminary Memorandum

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~~Grant AM~~  
Grant AM

JF  
10-  
for the pet-

-14  
10/9 VI

K

Asp requested received this; Ark. statutes allow seizure of funds in the estate of prisoners; these payments are such funds; thus, there is no problem here worthy of the Court's review.

In the absence of a conflict, I recommend a denial.

K JF You

Views of SG requested & received, 9/22/87... see attached sheets  
Grant AM 9/25/87

~~Stricken from Feb 80)~~

PRELIMINARY MEMORANDUM

~~February 20, 1987~~ Conference  
List 8, Sheet 2  
No. 86-6124 - CSX

Bennett, et al.  
(prisoners whose Soc. Sec and Veterans' benefits were used by State)

Cert to Ark. S. Ct.  
(Dudley for maj., Purtle, diss.)

v.

Arkansas

State/Civil

Timely

1. SUMMARY: Petrs contend that the Arkansas Supreme Court erred in holding that social security and veterans' benefits may be included in a prisoner's "estate" for purposes of a state law requiring contributions by prisoners with estates to pay the costs of their incarceration.

2. FACTS AND DECISIONS BELOW: The state attorney general filed this suit seeking to obtain reimbursement for the state for maintaining petrs as inmates. The action was filed pursuant to the "State Prison Inmate Care and Custody Reimbursement Act,"

Ark.Stat. Ann. §§46-1701 to 1707, which provides that when an inmate is found to have an estate the state may have a guardian appointed and the estate may be liable to the state for the inmate's room, board, clothing, and medical expenses. "Estate" is defined as including payments from the Social Security Administration and other pensions or retirement benefits. Petr Bennett's estate consisted solely of funds he received from Social Security retirement benefits, and petr Shelton's estate consisted of funds he received from the Veterans' Administration for disability. Bennett complained that subjecting his estate to liability violates the provision of 42 U.S.C. § 407 that "none of the moneys paid . . . shall be subject to . . . levy or other legal process. Shelton complained that the action violated a similar provision concerning veterans' benefits, 38 U.S.C. § 3101(a) (Payments "shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.") The tc found these benefits subject to the Arkansas provision and ordered part of the estates to be paid to the state.

The Ark. S. Ct. affirmed. If the federal and state acts were in conflict, the Supremacy Clause would dictate our result. There is, however, no conflict, because the federal statutes contain an implied exception to the exemption from legal process when the state provides for the care and maintenance of a beneficiary of these benefits. See Department of Health v. Davis, 616 F.2d 828 (CA5 1980). As explained in Davis, the

purpose of the benefits is to provide for the care and maintenance of the beneficiaries. The exemption from creditors' actions evidences a clear legislative philosophy of precluding beneficiaries from diverting the benefits away from the goal. The benefits are paid for the purpose of assuring the beneficiaries' care and maintenance, and the state seeks to do nothing more than that here. Philpott v. Essex County Welfare Board, 409 U.S. 413 (1979), is not to the contrary. We agree with the distinction of Philpott drawn by CA5 in Davis, 616 F.2d, at 830 ("Philpott is different from this case, however, since there the welfare recipient was capable, at least in part, of providing for his own care, and the state was not acting in loco parentis, as it is here. The beneficiary in Philpott was merely receiving assistance in providing for himself.) The Court of Appeals of Michigan has also followed this approach. Department of Correction v. Brown, 125 Mich. App. 620, 337 N.W.2d 23 (1983).

Justice Purtle dissented, arguing that the Arkansas law conflicted with the federal statutes and that Philpott was controlling. "In enacting these laws the United States Congress unquestionably, by the clear and express language of the statutes, intended the recipients to be the owners of such funds and that no one, not even judgment creditors, could take these funds away from the beneficiaries." Petn.App. at 6.

3. CONTENTIONS: This case marks the second time this term that the Court must tell the Arkansas Supreme Court to follow the Supremacy Clause. See Rose v. Arkansas State Police, 107 S.Ct. 334 (1986). The Social Security and Veterans' statutes clearly

prohibit the use of any kind of legal process to seize benefits. There are no "implied exceptions" to this prohibition, and only Congress can change the effect of these nonattachment statutes. See Hisquierdo v. Hisquierdo, 439 U.S. 575 (1979); Philpott, supra. The federal statutes permit of no exceptions or different standards that would allow persons acting in loco parentis to attach these benefits. The implications of the decision below are significant, because more states are trying to attack federally protected benefits, especially where, as here, the beneficiaries are vulnerable.

4. DISCUSSION: Petrs make a colorable claim that the Arkansas Supreme Court erred in finding an exception to the federal statutes, which are on their face absolute. The exception found by the Arkansas court is a creation of the CA5 in Davis and was applied in that case to allow the state to use benefits for one who had been declared an incompetent. Two states--Michigan and Arkansas--have now applied this exception to uphold the application of statutes including the benefits as part of a prisoner's obligation to pay for his incarceration. Consideration of the issue is thus not widespread, and there is no split for the Court to resolve, so denial might be appropriate at this time. Nevertheless, the decisions cited by petrs seem to conflict with the plain language of the statutes and with the tenor of Philpott. Accordingly,

I recommend CFR.

Response waived.

IFP status: Petr Bennett's affidavit establishes that IFP

status is proper. Petr Shelton, according to his attorney, cannot be found. The attorney has attached to the petn Shelton's answers to interrogatories in an attempt to establish IFP status. IF use of these interrogatories is appropriate, they demonstrate that Shelton may proceed IFP.

February 11, 1987

Leitch <sup>David</sup>  
(Virginia, Wilkinson, the Chief)      opn in petn

*I go along with this recommendation. While not completely unreasonable, the Ark. decision might well be prohibited by the plain language. This case presents an issue that really Congress might have to resolve itself.*

CFR      JF 2/14