4-3-1972

04-03-1972 Per Curiam

Unknown Justice
US Supreme Court

SUPREME COURT OF THE UNITED STATES

No. 70–5082

Laverne Carter et al., Appellants, *v.* Wayne Stanton et al. } On Appeal from the United States District Court for the Southern District of Indiana.

[April 3, 1972]

PER CURIAM.

Appellants are women who contend that an Indiana welfare regulation governing eligibility for state and federal aid to dependent children contravenes the Fourteenth Amendment and the Social Security Act, 42 U. S. C. § 602 (a)(10). The regulation provides that a person who seeks assistance due to separation or the desertion of a spouse is not entitled to aid until the spouse has been continuously absent for at least six months, unless there are exceptional circumstances of need. Burns Ind. Rules and Regs. (52–1001)–2 (1967). Appellants brought this action in the United States District Court for the Southern District of Indiana, basing jurisdiction on 42 U. S. C. § 1983, 28 U. S. C. § 1343, and seeking both declaratory and injunctive relief. A three-judge court was convened pursuant to 28 U. S. C. § 2281. After a "preliminary hearing on defendant's" motion to dismiss "at which the court" received evidence upon which to resolve the matter, the court dismissed the complaint on the ground that none of the claimants had exercised her right under Indiana law to appeal from a county decision denying welfare assistance, Burns Ind. Stat. Ann. § (52–1211)–1 (Supp. 1970), and therefore appellants had failed to exhaust administrative remedies. In the alternative, the court held that the pleadings did not present a substantial federal question and that the court lacked jurisdiction under 42

U. S. C. § 1983; 28 U. S. C. §§ 2201, 2202. *Carter* v. *Stanton,* No. IP 70–C–124 (SD Ind., Dec. 11, 1970). This direct appeal followed and we noted probable jurisdiction. 402 U. S. 994 (1970).

Contrary to the State's view, our jurisdiction of this appeal under 28 U. S. C. § 1253 is satisfactorily established. *Sullivan* v. *Alabama State Bar,* 394 U. S. 812, aff'g, 295 F. Supp. 1216 (MD Ala. 1969); *Whitney Stores, Inc.* v. *Summerford,* 393 U. S. 9, aff'g, 280 F. Supp. 406 (SC 1968). Also, the District Court plainly had jurisdiction of this case pursuant to 42 U. S. C. § 1983 and 28 U. S. C. § 1343. *Damico* v. *California,* 389 U. S. 416 (1967). *Damico,* an indistinguishable case, likewise establishes that exhaustion is not required in circumstances such as those presented here. Cf. *McNeese* v. *Board of Education,* 373 U. S. 668 (1963); *Monroe* v. *Pape,* 365 U. S. 167 (1961).

Finally, if the court's characterization of the federal question presented as insubstantial was based on the face of the complaint, as it seems to have been, it was error. Cf. *Dandridge* v. *Williams,* 397 U. S. 471 (1970); *Shapiro* v. *Thompson,* 394 U. S. 618 (1969); *Damico* v. *California, supra.* But it appears that at the hearing on the motion to dismiss, which was based in part on the asserted failure "to state a claim upon which relief can be granted" (R. 19), matters outside the pleadings were presented and not excluded by the court. The court was therefore required by Rule 12 (b) of the Federal Rules of Civil Procedure to treat the motion to dismiss as one for summary judgment and to dispose of it as provided in Rule 56. Under Rule 56, summary judgment cannot be granted unless there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. If this is the course the District Court followed, its order is opaque and unilluminating as to either the relevant facts or the

law with respect to the merits of appellants' claim. In this posture of the case, we are unconvinced that summary judgment was properly entered. The judgment of the District Court is therefore vacated and the case is remanded to that court for proceedings herewith.

So ordered.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.