Case Western Reserve Law Review

Volume 11 | Issue 3 Article 37

1960

Segregation--The Battle Continues

Lawrence M. Bell

with the current practice to discourage fraud and misrepresentation in the sale of used automobiles.[23] In the future, Ohio courts should be better equipped to carry out justice in cases of a similar nature.

DON P. BROWN

SEGREGATION — THE BATTLE CONTINUES

Plaintiff, a Negro civilian employee of the United States Air Force, was seated in the waiting room of the Greenville Air Terminal in Greenville, South Carolina, awaiting arrival of the scheduled flight which was to take him to Selfridge Air Force Base in Michigan. He was seated in that portion of the waiting room which was reserved for persons of the Caucasian race. The manager of the air terminal approached plaintiff and advised him that he could not remain seated, and that he would have to occupy the section of the waiting room which was assigned to Negroes. Plaintiff refused to move, whereupon the manager ordered him out of the waiting room. Subsequently, plaintiff filed a motion for a preliminary injunction in the federal district court at Greenville, South Carolina, the purpose of which was to restrain the members of the Greenville Airport Commission "from making any distinction based upon color in regard to services at the Greenville Municipal Airport."[1]

After striking four paragraphs from plaintiff's complaint on the ground that they were immaterial,[2] the court proceeded to consider defendants' motion to dismiss the complaint. Defendants contended that the district court lacked jurisdiction over the subject matter and, also, that the complaint failed to state a claim upon which relief could be granted.[3] The court dismissed the complaint, but the opinion fails to identify the express ground upon which the court based its conclusion.

To invoke the jurisdiction of the court, plaintiff relied upon that section of the United States Code[4] which confers upon the district courts original jurisdiction to entertain civil actions based upon a violation of civil rights under color of state law. The gravamen of plaintiff's cause of action was a violation of that section of the Civil Rights Act which imposes liability on every person in a suit at law or in an action in equity who, under color of any state statute, ordinance, regulation, custom, or usage deprives a citizen of a civil right.[5] From an analysis of these two sections of the code, it is clear that the district courts have *general* jurisdiction over the subject matter of the action; therefore, the court must have dismissed the complaint because it failed properly to state a cause of action.

Even though the court did not specifically state the reason for

23. Jones v. West Side Buick Auto Co., 231 Mo. App. 187, 93 S.W.2d 1083 (1936); PROSSER, TORTS 547 (2d ed. 1955).

dismissal, it did find the complaint defective because plaintiff had failed to specify a particular South Carolina statute under color of which defendants enforced the segregation in the waiting room. Unless the deprivation of a civil right can be attributed to "state action," the prohibitions of the fourteenth amendment and the liabilities created by the Civil Rights Act[6] do not apply.[7] The application of this principle in the instant case, however, was erroneously restrictive. The Supreme Court of the United States has said that a state may act through any of its agencies, and if the actions of the state agency result in a deprivation of civil rights, a cause of action accrues to the victim.[8] Contrary to the opinion of the district court in *Henry v. Greenville Airport Commission,* the courts have held that a person may be deprived of his civil rights by state action, although the state agency was not acting pursuant to a particular discriminatory state law.[9]

Plaintiff alleged that the state legislature, by a special act, had established the Greenville Airport Commission, and had empowered the commission to "make such rules and regulations as may be necessary in the conduct and operation of said aeroplane landing fields."[10] He further alleged that the manager of the airport enforced the segregation in the waiting room. An application of the recognized principles of agency law results in the conclusion that the commission itself enforced the segregation in the waiting room. Because the

1. Henry v. Greenville Airport Comm'n, 157 F. Supp. 343, 346 (W.D.S.C. 1959).

2. The court held that the matter in controversy did not exceed $10,000 and that, consequently, plaintiff was not justified in relying on sections 1331 and 1332 of 28 U.S.C. (1958), which require that the amount in controversy exceed that figure. Also struck was an allegation that the federal government gave sums of money to the commission, and an allegation that plaintiff was bringing the suit as a class action pursuant to FED. R. CIV. P. 23(a)(3).

3. Henry v. Greenville Airport Comm'n, 175 F. Supp. 343, 350 (W.D.S.C. 1959).

4. 71 Stat. 637 (1957), 28 U.S.C. § 1343 (1958), which provides 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, or 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 all persons within the jurisdiction of the United States. . . ."

5. Rev. Stat. § 1979 (1875), 42 U.S.C. § 1983 (1958).

6. REV. STAT. §§ 722, 1977-88, 1990, 5517 (1875), 18 Stat. 337 (1875), 71 Stat. 638 (1957), as amended, 42 U.S.C. §§ 1981-94 (1958), resulted from the power given to Congress by the fourteenth amendment which enables Congress to pass legislation in order to enforce the prohibitions of the amendment.

7. Shelley v. Kraemer, 334 U.S. 1 (1948); The Civil Rights Cases, 109 U.S. 3 (1883).

8. Cooper v. Aaron, 358 U.S. 1, 17 (1958); *Ex parte* Virginia, 100 U.S. 339, 347 (1880).

9. Screws v. United States, 325 U.S. 91 (1945) (sheriff allowed prisoners to be beaten); Smith v. Allwright, 321 U.S. 649 (1944) (political party prevented Negroes from voting in primary). See also Department of Conservation & Dev. v. Tate, 231 F.2d 615 (4th Cir. 1956); Dawson v. Mayor & City Council, 220 F.2d 386 (4th Cir. 1955); Kerr v. Enoch Pratt Free Library, 149 F.2d 212 (4th Cir. 1945), *cert. denied,* 326 U.S. 721 (1945); Lawrence v. Hancock, 76 F. Supp. 1004 (S.D. W. Va. 1948).

10. Henry v. Greenville Airport Comm'n, 175 F. Supp. 343, 348 (W.D.S.C. 1959).

commission is an agency of the state,[11] the deprivation of plaintiff's civil rights was a result of state action.[12] Consequently, even though plaintiff failed to allege a particular South Carolina statute which affirmatively directed a deprivation of his civil rights, he nevertheless presented adequate facts to establish state action in this case. Thus, the district court erred in requiring plaintiff to identify a particular statute which in affirmative terms deprived him of his civil rights.[13]

The court further found plaintiff's complaint defective in that he failed to allege that the Negro waiting room was in any way inadequate or inferior in accommodation to that reserved for whites.[14] The recent civil rights cases have definitely disapproved of the ancient "separate but equal" doctrine when applied to interstate commerce.[15] It is perfectly clear that plaintiff was a ticket holder for an interstate flight, and the fact that he was in the waiting room of the terminal does not exclude him from the protection accorded an interstate traveler.[16] The position taken by the court is virtually an anachronism, and its reliance upon this repudiated doctrine must be soundly criticized.

The court's misinterpretation of the law is not the only ground upon which the decision is rendered susceptible to adverse criticism. The following excerpt is illustrative of the manner in which the court dealt with the plaintiff's complaint.

> . . . [C]omment should be made concerning plaintiff's affidavit that he "was required to be segregated." What that loose expression means is anyone's guess. From whom was he segregated? . . . But suppose he was segregated from people who did not care for his company or association. . . . If he was trying to invade the civil rights of others, an injunction might be more properly invoked against him. . . . Even whites, as yet, still have the right to choose their own companions and associates, and to preserve the integrity of the race with which God Almighty has endowed them. . . .[17]

---

11. See Pennsylvania v. Board of Directors of City Trusts, 353 U.S. 230 (1957); Baldwin v. Morgan, 251 F.2d 780 (5th Cir. 1958); Kerr v. Enoch Pratt Free Library, 149 F.2d 212 (4th Cir. 1945), *cert. denied,* 326 U.S. 721 (1945).

12. The doctrine of state action has been expanded to include the discriminatory acts of lessees of public property. Miur v. Louisville Park Theatrical Ass'n, 347 U.S. 971 (1954), *reversing* 202 F.2d 275 (6th Cir. 1953); Department of Conservation and Dev. v. Tate, 231 F.2d 615 (4th Cir. 1956); Kerr v. Enoch Pratt Free Library, 149 F.2d 212 (4th Cir. 1945), *cert. denied,* 326 U.S. 721 (1945).

13. See note 9 *supra.*

14. In Plessy v. Ferguson, 163 U.S. 537 (1896), it was held that if the segregated areas were equal in comfort and convenience, the segregation was not unconstitutional.

15. See Henderson v. United States, 339 U.S. 816 (1950); Morgan v. Virginia, 328 U.S. 373 (1946); Baldwin v. Morgan, 251 F.2d 780 (5th Cir. 1958). *Cf.* Flemming v. South Carolina Elec. & Gas Co., 224 F.2d 752 (4th Cir. 1955), *appeal dismissed,* 351 U.S. 901 (1955); Browder v. Gayle, 142 F. Supp. 707 (M.D. Ala. 1956), *aff'd,* 352 U.S. 903 (1956).

16. See Baldwin v. Morgan, 251 F.2d 780 (5th Cir. 1958).

17. Henry v. Greenville Airport Comm'n, 175 F. Supp. 343, 347 (W.D.S.C. 1959).