The Burger Court Opinion Writing Database

MTM, Inc. v. Baxley

420 U.S. 799 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

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

CHAMBERS OF
THE CHIEF JUSTICE

February 12, 1975

Re: 73-1119 - MTM v. Baxley

Dear Bill:

I join your proposed per curiam disposition dated January 15, 1975.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

WOD
3-20
cir.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1119

MTM, Inc., et al., Appellants, *v.* William J. Baxley, etc., et al.	On Appeal from the United States District Court for the Northern District of Alabama.

[March —, 1975]

MR. JUSTICE DOUGLAS, dissenting.

Like my Brother WHITE, I have great difficulty understanding how it is possible, within the plain terms of 28 U. S. C. § 1253, to avoid a direct appeal to this Court from a dismissal which is required to be made by a district court of three judges. The Court does not decide whether one or three judges would be required for the disposition made below. Rather it concludes that direct appeal to this Court under § 1253 lies only from the denial of injunctive relief by a three-judge court which "rests upon resolution of the merits of the constitutional claim presented below." *Ante*, at —.

I could at least concur in the result if I believed that a single judge had the power to dismiss based on *Younger* v. *Harris* grounds, but I have my doubts about that proposition as well. Recently the Court's hostility to three-judge courts has led it to restrict the need for such courts. See *Gonzalez* v. *Automatic Employees Credit Union*, — U. S. — (1974); *Hagans* v. *Lavine*, 415 U. S. 528 (1974). I joined in those decisions, but I have come to the conclusion that the Court is going too far, and I therefore must register my dissent.

Many have argued in recent years that the three-judge court is no longer needed, that it has outlived its original

Wm Doug
3-24

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 21, 1975

RE: No. 73-1119 MTM, Inc. v. William J. Baxley

Dear Bill:

I agree with the Per Curiam you have prepared in the above.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 16, 1975

Re: No. 73-1119, MTM, Inc. v. Baxley

Dear Bill,

I agree with your proposed per curiam in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73–1119

MTM, Inc., et al., Appellants, *v.* William J. Baxley, etc., et al. } On Appeal from the United States District Court for the Northern District of Alabama.

[February —, 1975]

MR. JUSTICE WHITE, concurring in the result.

The Court holds that dismissing a suit on *Younger* v. *Harris* grounds is not an order denying an injunction for the purposes of 28 U. S. C. § 1253 and is therefore not appealable directly to this Court, even assuming that the order could be issued only by a three-judge court. I agree with the result but not with this mode of achieving it.

If only a three-judge court may order such a dismissal, I have great difficulty in excluding such an order from the reach of the plain terms of § 1253. The sole justification for so manhandling the language of the section is to avoid our hearing a direct appeal on a nonconstitutional issue of federal law that has little if any connection with the reasons for requiring either three-judge courts or direct review of their decisions. That procedure was adopted to protect state statutes from improvident injunctions issued by a single federal judge on federal constitutional grounds. The more straightforward approach to this case would be to hold that decisions on issues other than requests for injunctive relief challenging the constitutionality of state statutes need not be made by three judges but rather are to be made or deemed to be made by single-judge courts whose decisions are appealable only to the courts of appeals. Proceeding in this manner would require no more than construing 28 U. S. C. §§ 2281

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: White, J.

Circulated: _____

Recirculated: 3-22-75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73–1119

MTM, Inc., et al., Appellants,
v.
William J. Baxley, etc., et al.

On Appeal from the United States District Court for the Northern District of Alabama.

[March 25, 1975]

MR. JUSTICE WHITE, concurring in the result.

The Court holds that dismissing a suit on *Younger* v. *Harris* grounds is not an order denying an injunction for the purposes of 28 U. S. C. § 1253 and is therefore not appealable directly to this Court, even assuming that the order could be issued only by a three-judge court. I agree with the result but not with this mode of achieving it.

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

CHAMBERS OF
THURGOOD MARSHALL

February 27, 1975

Re: No. 73-1119 -- MTM, Inc. et al. v. William J. Baxley

Dear Bill:

I agree with your suggested Per Curiam.

Sincerely,

T. M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 20, 1975

Re: No. 73-1119 - MTM, Inc. v. Baxley

Dear Bill:

Please join me in your per curiam.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 16, 1975

No. 73-1119 MTM, Inc. v. Baxley

Dear Bill:

Please join me in your Per Curiam.

Sincerely,

L. Lewis

Mr. Justice Rehnquist

CC: The Conference

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 1-13-76

No. 73-1119

Recirculated: _____

MTM, Inc., et al., Appellants, v. William J. Baxley, etc., et al. } On Appeal from the United States District Court for the Northern District of Alabama.

[January —, 1975]

PER CURIAM.

The State of Alabama brought suit against appellant MTM in state court under the Alabama Nuisance Law, Tit. 7, §§ 1091–1108, Code of Alabama 1940,[1] seeking to enjoin the continued operation of a nuisance by MTM. It alleged that because of convictions for violations of local obscenity laws by the Pussycat Adult Theater, an enterprise owned by MTM in Birmingham, Alabama, the theater constituted a nuisance under this statute.[2] After a hearing on the complaint, the state court issued a temporary injunction under the nuisance law, closing the theater.[3]

[1] Nuisance is defined in § 1091 of this act as "any place . . . upon which lewdness, assignation or prostitution is conducted, permitted, continued, or exists, and the personal property and contents used in conducting or maintaining any such place for any such purpose." The remainder of the law consists of detailed procedural provisions governing the maintenance of a nuisance action.

[2] In addition to MTM, Mobile Bookstore was a plaintiff below and is an appellant in the immediate action. There are no material differences in the facts surounding Mobile's participation in this action and those surrounding MTM's participation.

[3] Although expedited appeal of the temporary injunction was available in state courts under Alabama Code, Tit. 7, §§ 757, 1057 (Recomp. 1958), appellants initiated no state court appeal prior

P. 3 and
STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Mr. Justice Doug
Mr. Justice Brenn
Mr. Justice Steward
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

2nd DRAFT

From: Rehnquist, J.

Circulated: 1-13

Recirculated: 1-15

SUPREME COURT OF THE UNITED STATES

No. 73-1119

MTM, Inc., et al., Appellants,
v.
William J. Baxley, etc., et al.

On Appeal from the United States District Court for the Northern District of Alabama.

[January —, 1975]

PER CURIAM.

The State of Alabama brought suit against appellant MTM in state court under the Alabama Nuisance Law, Tit. 7, §§ 1091–1108, Code of Alabama 1940,[1] seeking to enjoin the continued operation of a nuisance by MTM. It alleged that because of convictions for violations of local obscenity laws by the Pussycat Adult Theater, an enterprise owned by MTM in Birmingham, Alabama, the theater constituted a nuisance under this statute.[2] After a hearing on the complaint, the state court issued a temporary injunction under the nuisance law, closing the theater.[3]

[1] Nuisance is defined in § 1091 of this act as "any place . . . upon which lewdness, assignation or prostitution is conducted, permitted, continued, or exists, and the personal property and contents used in conducting or maintaining any such place for any such purpose." The remainder of the law consists of detailed procedural provisions governing the maintenance of a nuisance action.

[2] In addition to MTM, Mobile Bookstore was a plaintiff below and is an appellant in the immediate action. There are no material differences in the facts surrounding Mobile's participation in this action and those surrounding MTM's participation.

[3] Although expedited appeal of the temporary injunction was available in state courts under Alabama Code, Tit. 7, §§ 757, 1057 (Recomp. 1958), appellants initiated no state court appeal prior

Wm. Doug 6/74

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 28, 1975

MEMORANDUM TO THE CONFERENCE:

Re: Hold for MTM v. Baxley, No. 73-1119

The only hold for MTM is BT Investment Managers Inc. v. v. Dickinson, No. 74-497. In this case, Bankers Trust Co. of New York and its subsidiary filed suit against appellee Dickinson, the Florida state comptroller, in USDC (N.D. Fla.) seeking a declaratory judgment that Fla. Stat. §§ 659.141, 660.10, which restrict the banking-related activities of foreign corporations in Florida, were unconstitutional and seeking to enjoin their enforcement. A three-judge federal panel was convened under 28 U.S.C. § 2281 to hear the complaint.

A majority of the court concluded that abstention was proper since resolution of the constitutional question involved resolution of dispositive unsettled issues of state statutory construction [Railroad Comm'n v. Pullman Co., 312 U.S. 496] and since a detailed state regulatory scheme involving questions of state policy was involved. Buford v. Sun Oil Co., 319 U.S. 315. They therefore dismiss the cause without prejudice "affording plaintiffs the opportunity to repair to state courts to litigate the questions of state law."

Appellants then filed this appeal directly with this Court. They characterize the judgment below as "an order . . . denying . . . a permanent injunction" in an action required to be heard by a three-judge court and hence find jurisdiction over the appeal conferred by 28 U.S.C. § 1253.1/

1/Appellants filed their notice of appeal 58 days after judgment below. 28 U.S.C. § 2101(b) provides a 60 day jurisdictional time limit for the filing of notices of appeal from final orders while providing only a 30 day jurisdictional period for the filing of notice of appeal in an appeal from

Appellee, anticipating our decisions in Gonzalez v. Employees Credit Union, No. 73-858 and MTM, supra, argues that the judgment of the court below is not an order denying an injunction within the meaning of 28 U.S.C. § 1253 since the court below did not reach the constitutional merits of the complaint. Further the case was not an action required to be heard by a three-judge court under 28 U.S.C. § 2281 since the case was disposed of on the ground of abstention rather than its constitutional merits.

Since, under our decision in MTM v. Baxley, supra, an appeal under 28 U.S.C. § 1253 from the order of a three-judge court denying injunctive relief lies only where such order rests upon resolution of the merits of the constitutional claim presented below, id., slip op. at 5-6, it is clear that there is no jurisdiction over this appeal from a judgment disposing of the complaint below on abstention grounds. Like MTM, supra, this approach makes it unnecessary to consider whether this action was required to be heard by a three-judge court under 28 U.S.C. § 2281. Cf. MTM v. Baxley, supra, at 7 (Opinion of White, J. concurring); Idlewild Liquor Corp. v. Epstein, 370 U.S. 713 (1962).

Like MTM itself, it appears in the interest of fairness appropriate to vacate the decision of the USDC,

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an interlocutory order. Appellees argue that the dismissal on abstention grounds was an interlocutory order and hence the notice of appeal was filed 28 days jurisdictionally late. Neither party cites controlling precedent on the issue. It appears reasonably clear under Idlewild Liquor Corp. v. Epstein, 370 U.S. 713, 715 n. 2 (1962) that the judgment of the court below was "final" for purposes of 28 U.S.C. § 1291. In disposing of the case along MTM lines, the Court might fairly assume, without deciding, that the order was a final one for purposes of 28 U.S.C. § 2101(b)'s jurisdictional time limit for filing of a notice of appeal. Unlike most abstention cases, the USDC here dismissed the cause of action (albeit without prejudice to a future state court action) rather than retaining jurisdiction during the pendency of state proceedings. Cf. Zwickler v. Koota, 389 U.S. 241, 244 n. 4 (1967); County of Alleghany v. Frank Mashuda Co., 360 U.S. 185 (1959). In such circumstances, the three-judge court had ended its judicial labor in the cause.

remanding the case back to the USDC so that a fresh order may be entered and a timely appeal prosecuted to the Court of Appeals. Id., slip op. at 6.

I will therefore vote to vacate the decision below and to remand this case to the USDC citing our decision in MTM.

Sincerely,