The Burger Court Opinion Writing Database

Webb v. Webb

451 U.S. 493 (1981)

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

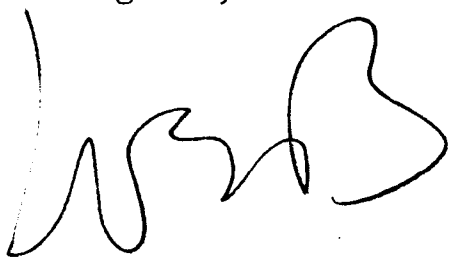
March 17, 1981

Re: 79-6853 - Webb v. Webb

MEMORANDUM TO THE CONFERENCE:

For the reasons set out in respondent's brief and Byron's memorandum, I believe the grant of cert in this case was improvident. If enough others reach that view before Friday, I will propose that we forthwith issue an order on Friday dismissing the writ as improvidently granted.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

May 13, 1981

Re: No. 79-6853, Webb v. Webb

Dear Byron:

I join.

Regards,

WEB

Justice White

copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 18, 1981

MEMORANDUM TO THE CONFERENCE

RE: No. 79-6853 Webb v. Webb

I'm also troubled by Byron's memo but the issue is fully argued in the briefs and I would prefer to go on with the oral argument. There we can explore the question at length and decide it at our voting conference.

W.J.B.Jr.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 11, 1981

RE: No. 79-6853 Webb v. Webb

Dear Lewis:

Please join me in your concurring opinion.

Sincerely,

Bill

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 19, 1981

MEMORANDUM TO THE CONFERENCE

Re: 79-6853 - Webb v. Webb

I would not dismiss at this stage of the proceeding.

P.S.

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 7, 1981

Re: No. 79-6853, Webb v. Webb

Dear Byron,

I agree with your proposed opinion for the Court, now labeled a per curiam. Since this was an argued case, I see no reason whatever that it should not be a signed opinion.

Sincerely yours,

P.S.

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 17, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 79-6853 - Webb v. Webb

Respondent in this case, which is to be argued next week, contends that the petition should be dismissed as improvidently granted because petitioner failed to raise and preserve her federal constitutional claims in the state courts. Having reviewed the record and anticipating that the jurisdictional issue will arise at oral argument, I thought it might be helpful to circulate this memorandum describing what the record appears to show.

The question we granted cert to decide in this case is whether the Full Faith and Credit Clause of Article IV, § 1, requires the Georgia courts to recognize and adhere to a Florida decree in a child custody matter. However, nowhere in any of the papers filed in the the state courts, did petitioner cite to the Federal Constitution or cite to any

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

From: Mr. Justice White

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6853

Leah Lynn Parrish Webb, Petitioner, *v.* James Thomas Webb. } On Writ of Certiorari to the Supreme Court of Georgia.

[May —, 1981]

PER CURIAM.

This case involves a custody dispute between the mother and father of a minor child. Their dispute has reached this Court because the state courts of Florida and Georgia have reached conflicting results in assigning custody of the child.

On March 8, 1979, petitioner, the mother, filed an action in Florida state court seeking custody of her son. On April 18, 1979, the Florida court entered a judgment granting her custody. On March 23, 1979, respondent, the father, filed an action in Georgia state court also seeking custody. On June 21, 1979, he was awarded custody by the Georgia court. The Georgia Supreme Court affirmed that decision.

The mother then filed a petition for writ of certiorari in this Court, raising just one question: "Does Article IV, § 1 of the United States Constitution, demand that Georgia . . . give full faith and credit to a Florida decree rendered immediately prior to Georgia's acceptance of unqualified jurisdiction." Petitioner alleged that she had properly raised this federal question in the Georgia courts. Respondent filed a brief in opposition to the petition for certiorari in which he argued that the Full Faith and Credit Clause must give way to the "best interests" of the child in a child custody proceeding.[1]

[1] Respondent also argued that the Georgia court properly assumed juris-

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. [illegible]
Mr. [illegible]

Stylistic changes, pp. 2 & 6

From: [illegible]

Circulated: [illegible]

Recirculated: [illegible]

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6853

Leah Lynn Parrish Webb, Petitioner, *v.* James Thomas Webb. | On Writ of Certiorari to the Supreme Court of Georgia.

[May —, 1981]

PER CURIAM.

This case involves a custody dispute between the mother and father of a minor child. Their dispute has reached this Court because the state courts of Florida and Georgia have reached conflicting results in assigning custody of the child.

On March 8, 1979, petitioner, the mother, filed an action in Florida state court seeking custody of her son. On April 18, 1979, the Florida court entered a judgment granting her custody. On March 23, 1979, respondent, the father, filed an action in Georgia state court also seeking custody. On June 21, 1979, he was awarded custody by the Georgia court. The Georgia Supreme Court affirmed that decision.

The mother then filed a petition for writ of certiorari in this Court, raising just one question: "Does Article IV, § 1 of the United States Constitution, demand that Georgia . . . give full faith and credit to a Florida decree rendered immediately prior to Georgia's acceptance of unqualified jurisdiction." Petitioner alleged that she had properly raised this federal question in the Georgia courts. Respondent filed a brief in opposition to the petition for certiorari in which he argued that the Full Faith and Credit Clause must give way to the "best interests" of the child in a child custody proceeding.[1]

[1] Respondent also argued that the Georgia court properly assumed juris-

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

Circulated: 14 MAY 1981

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6853

Leah Lynn Parrish Webb, Petitioner, *v.* James Thomas Webb. | On Writ of Certiorari to the Supreme Court of Georgia.

[May —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

This case involves a custody dispute between the mother and father of a minor child. Their dispute has reached this Court because the state courts of Florida and Georgia have reached conflicting results in assigning custody of the child.

On March 8, 1979, petitioner, the mother, filed an action in Florida state court seeking custody of her son. On April 18, 1979, the Florida court entered a judgment granting her custody. On March 23, 1979, respondent, the father, filed an action in Georgia state court also seeking custody. On June 21, 1979, he was awarded custody by the Georgia court. The Georgia Supreme Court affirmed that decision.

The mother then filed a petition for writ of certiorari in this Court, raising just one question: "Does Article IV, § 1 of the United States Constitution, demand that Georgia . . . give full faith and credit to a Florida decree rendered immediately prior to Georgia's acceptance of unqualified jurisdiction." Petitioner alleged that she had properly raised this federal question in the Georgia courts. Respondent filed a brief in opposition to the petition for certiorari in which he argued that the Full Faith and Credit Clause must give way to the "best interests" of the child in a child custody proceeding.[1]

[1] Respondent also argued that the Georgia court properly assumed juris-

18 MAY 1981

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6853

Leah Lynn Parrish Webb, Petitioner, *v.* James Thomas Webb. | On Writ of Certiorari to the Supreme Court of Georgia.

[May —, 1981]

JUSTICE MARSHALL, dissenting in part.

I share the Court's concerns for comity and for careful pleadings. Nonetheless, I do not believe that either of these concerns justifies the Court's apparent conclusion that a petitioner who fails to cite the exact location of a federal constitutional provision has neglected to raise a claim on that ground.

The Court attempts to reason that the petitioner neglected to raise any claim under the Full Faith and Credit Clause of the Constitution. As the Court acknowledges, however, petitioner "did use the phrase 'full faith and credit' at several points in the proceeding below." *Ante,* at 3. Indeed, she asserted in her amended complaint that the decision of the Florida court "should be accorded full faith and credit" by the Georgia court, and reiterated this claim in her enumeration of errors to the Georgia Supreme Court. The Court tries to translate these words as references not to the identical language in the Federal Constitution, but instead to a provision of Georgia law which fails to mention any of the three words, "full," "faith," or "credit." See § 74-514, Uniform Child Custody Jurisdiction Act. The Georgia provision governs allocation of jurisdiction under the Uniform Child Custody and Jurisdiction Act, which both Georgia and Florida have enacted as their own law. I fail to see how the interests of improved pleadings or comity are served by the

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 11, 1981

Re: No. 79-6853 - Webb v. Webb

Dear Byron:

Please join me.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 19, 1981

79-6853 Webb v. Webb

Dear Chief:

As reluctant as I am to DIG another case, I am inclined to agree that this is a prime target.

In addition to the failure of petitioner to support before the Georgia Supreme Court "by argument or citation of authority" her claim that the full faith and credit clause had been violated, subsequent to our grant in this case Congress enacted (December 1980) the Parental Kidnapping Prevention Act of 1980. Although I have not looked at this Act carefully, I believe it preempts the field with respect to according full faith and credit to child custody determinations.

I would prefer, however, to wait until after arguments to decide the case.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 8, 1981

79-6853 Webb v. Webb

Dear Byron:

I agree with your Per Curiam.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

5/8/81

No. 79-6853, Webb v. Webb

JUSTICE POWELL, concurring.

I agree that the writ should be dismissed because petitioner did not raise her federal constitutional challenge in the Georgia courts. I join the Court's opinion with the understanding, however, that the broad statements in it are not to be taken as departing from the rule, reaffirmed just this Term, that the Court has jurisdiction to review plain error unchallenged in the state court when necessary to prevent fundamental unfairness. Wood v. Georgia, ___ U.S. ___, ___ n. 5 (1981). See also Vachon v. New Hampshire, 414 U.S. (1974)(finding plain error in an appeal from a State court).

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

5-12-81

Circulated: MAY 12 1981

1st PRINTED DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-6853

Leah Lynn Parrish Webb, Petitioner, *v.* James Thomas Webb. | On Writ of Certiorari to the Supreme Court of Georgia.

[May —, 1981]

JUSTICE POWELL, with whom JUSTICE BRENNAN joins, concurring.

I agree that the writ should be dismissed because petitioner did not raise her federal constitutional challenge in the Georgia courts. I join the Court's opinion with the understanding, however, that the broad statements in it are not to be taken as departing from the rule, reaffirmed just this Term, that the Court has jurisdiction to review plain error unchallenged in the state court when necessary to prevent fundamental unfairness. *Wood* v. *Georgia*, — U. S. —, —, n. 5 (1981). See also, *Vachon* v. *New Hampshire*, 414 U. S. (1974) (finding plain error in an appeal from a State court).

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

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 19, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 79-6853 Webb v. Webb

I agree with Bill Brennan that the case should not be stricken from the Conference or dismissed prior to argument, even though we may end up concluding to do so after argument.

Sincerely,

WHR

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Brennan 3/20

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 8, 1981

Re: No. 79-6853 Webb v. Webb

Dear Byron:

Please join me in your Per Curiam.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 8, 1981

Re: 79-6853 - Webb v. Webb

Dear Byron:

Please join me.

Respectfully,

JPS

Justice White

Copies to the Conference