Constitutional Law - Access to Courts - Indigent Seeking Divorce Decree

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Recent Decisions

**CONSTITUTIONAL LAW—ACCESS TO COURTS—INDIGENT SEEKING DIVORCE DEGREE**—The Supreme Court of the United States has held that the due process clause of the fourteenth amendment precludes a state from denying to an indigent access to the courts pursuant to an effort to dissolve a marriage, solely because of his inability to pay court fees.


Petitioners, welfare recipients in the state of Connecticut, sought divorces. Connecticut law requires a judicial decree before a marriage can be dissolved and prior to attaining the aforesaid decree one must pay certain fees. Due to petitioners' impoverished condition they were unable to sustain these costs and a bar to the courtroom resulted. Subsequent action concluded in a three-judge United States District Court dismissing the complaint and the United States Supreme Court noting probable jurisdiction.

Justice Harlan, speaking for the majority, found that civil litigants seldom have only the judicial process as a means of resolving their disputes, and as a result access to the courts had not frequently been considered as an element of due process. However, in this proceeding, Justice Harlan reasoned that because Connecticut law compels a judicial mandate prior to attaining a divorce, due process rationale must control. The Court found it an important factor that petition-

2. The traditional relief for the problem of the poor faced with court costs is to proceed "in forma pauperis." *Forma pauperis* relief is available to the poor in civil proceedings in many states either through express provision of statute or through court developed extensions of the common law. The types of fees and costs that are waived however differ radically among jurisdictions. In some, only filing fees are forgiven while in more liberal jurisdictions both fees and costs are waived. Connecticut does not have forma pauperis proceeding and is one of the states where there has been no relief through the common law. Comment, *In Forma Pauperis and the Civil Litigant*, 19 Cath. U.L. Rev. 191, 195 (1969).
3. 286 F. Supp. 968 (D. Conn. 1968). The plaintiffs sought a declaration that CONN. GEN. STAT. REV. § 52-259 (1968), requiring a payment of court fees, was unconstitutional as applied. They also sought an injunction requiring the state to permit the plaintiffs to proceed without the payment of any fees or costs. The Federal District Court held the statute was undesirable but not a denial of a right so fundamental that the Constitution by the equal protection or due process clause, would forbid Connecticut from continuing such a system.
5. Concurring opinions were filed by Justice Douglas and Justice Brennan. The dissenting opinion was filed by Justice Black.
6. 401 U.S. at 375.
7. "For at that point the judicial proceeding becomes the only effective means of resolving the dispute at hand and denial of defendant full access to that process raises grave problems for its legitimacy." *Id.* at 376.
et al. must resort to the judicial process to effectively settle their disputes; important enough to bridge the gap between civil and criminal adjudication, and enable Justice Harlan to use criminal litigation precedent. The Court went on to declare that a state must, absent a countervailing state interest of over-riding significance, give those who are forced to resort to the judicial forum a meaningful opportunity to be heard. Applying this principle to the instant case the Court found that the Connecticut cost requirement statute, being an effective bar to the judicial forum, was unconstitutional as applied.

The state attempted to propound sufficient interests to offset the petitioners' opportunity to gain admittance to the court. Fee and cost requirements as a means of resource allocation and cost recoupment were the state's more significant interests, which caused the Court to resort to Griffin v. Illinois. In Griffin, a criminal case, an indigent defendant had his path to the appellate courts blocked by his inability to pay for a transcript; the Court declared this barrier unconstitutional. In Boddie the Court rebuked the state's asserted interest relying on Griffin in which the same interest was offered and rejected. They went further by stating that in Griffin the transcript could be waived as a convenient but not absolute predicate to court admittance, while in Boddie, Connecticut's cost statute imposes an invariable barrier to court access.

The Court explicitly limited its decision to where the good faith of one's indigency and divorce are beyond dispute. The Court went on to state that this is not a decision that the due process clause of the fourteenth amendment requires all individuals in all circumstances be guaranteed access to the court. However, in petitioners' circumstances, because it has been resolved that marriage is a basic right and the judicial machinery is the only means to effectuate this right, the doors of the courtroom must not be closed.

9. 401 U.S. at 377.
10. Id.
12. A statute or rule may be held constitutionally invalid as applied, although it can be a generally valid exercise of state power. Bates v. Little Rock, 361 U.S. 516, 527 (1960).
13. 401 U.S. at 382.
16. 401 U.S. at 382.
17. Id.
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While the precedent and reasoning for elimination of almost any bar to an indigent's ability to obtain a fair trial in criminal proceedings abounds, the same cannot be said for the impoverished litigant in civil adjudication. Prior to Boddie, the Court was faced with a situation in Cohen v. Beneficial Industrial Loan Company where a state statute required some of the plaintiffs in a stockholders' derivative action to post bond before gaining ability to litigate. The Court held that this statute did not violate the due process or equal protection clause.

In Williams v. Shaffer, the Georgia Supreme Court was presented with a situation where an indigent tenant sought to remain in possession of his dwelling and defend in a court of law an eviction action prosecuted by his landlord. In order to remain in possession and obtain a trial the tenant had to tender a bond with good security payable to the landlord for the payment of such sum, with costs, as may be recovered against him. The tenant was unable to sustain the bond costs and as a result could not gain court access. The Georgia Supreme Court did not find a constitutional abridgement and refused the tenant relief. Subsequently, the United States Supreme Court denied certiorari. To this denial Justice Douglas voiced a strong dissent in which he stated that by permitting the Georgia statute to flourish, the Court is in effect granting a hearing to the affluent tenant and denying relief to the poor tenant. As a result, the ability to gain entrance to the courtroom is predicated on wealth. Justice Douglas reasoned that in the past, financial limitations placed upon judicial review have been declared void. While recognizing this precedent was in the field of criminal proceedings and Williams a civil case,

21. In Boddie, Justice Harlan distinguished Cohen. His distinction was mainly on the basis that in Cohen they considered a statute on its face while in Boddie the Court considered the application of the statute. Justice Black in his dissent felt that Cohen was controlling. He stated: "Finally, the effect of both statutes may be to close the state courts entirely to certain plaintiffs, a result the Court explicitly accepted in Cohen. I believe the present case should be controlled by the Court's thorough opinion in Cohen." 401 U.S. at 392.
23. The Georgia summary eviction statute allows a landlord to oust a tenant in a very rapid manner. The landlord files with a Judge of the Superior Court or Justice of the Peace an affidavit that the tenant has held over or failed to pay rent. Ga. Code Ann. § 61-302 (1966).
he dismissed this possible distinction by explicitly stating that the equal protection clause of the fourteenth amendment is not limited to criminal proceedings.25

Boddie was a significant advancement in indigent justice. However, it is suggested the Supreme Court's limitation of due process rationale to divorce is unacceptable.26 No reason can be found why the right to be secure in one's dwelling27 or to gain a judgment following a tort claim28 is not as sacred to the impoverished litigant as the right to obtain a divorce. By curtailing advancement of their reasoning in Boddie, the Court has in effect allowed court costs to bar an indigent's access to the judicial process in many instances.29 Recognition that the indigent must also have his day in court has been delayed too long.

The Court in Chambers v. Baltimore & Ohio Railroad30 stated that the right to sue and defend in the court lies at the foundation of orderly government; it is one of the most essential privileges of citizenship.31 It is submitted that the due process clause of the fourteenth amendment affords the most effective basis to make the right of access to the judicial process meaningful for the poor. The Court has been explicit in stating that the right to seek redress in the judicial forum is a matter of due process.32

Defining the minimum requirements of due process in Mullane v. Central Hanover Trust Company,33 Justice Jackson declared that it requires notice and a meaningful opportunity to be heard, appropriate to the nature of the case.34 It appears that in the realm of indigent civil adjudication, because of the barrier imposed by court costs, a poor litigant is often denied due process. Opportunity to be heard, an essential of due process, is often illusory to the poor.35 As was stated

25. Id. at 773.
26. "In concluding that the Due Process Clause of the Fourteenth Amendment requires that these appellants be afforded an opportunity to go into court to obtain a divorce, we wish to re-emphasize that we go no further than necessary to dispose of the case before us, a case where the bona fides of both appellants' indigency and desire for divorce are here beyond dispute. 401 U.S. at 382.
27. See 385 U.S. at 774.
28. See generally Comment, Discriminations Against the Poor and the Fourteenth Amendment, 81 HARV. L. REV. 495 (1967).
29. See Willcox and Bloustein, The Griffin Case-Poverty and the Fourteenth Amendment, 43 CORNELL L.Q. 1 (1957).
30. 207 U.S. 142 (1907).
31. Id. at 148.
34. Id. at 513.
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in a report by the American Bar Association: "Although fees charged to litigants do not produce nearly enough revenue to operate the federal and state courts, such fees and ancillary charges are so high as to constitute a substantial deterrent to the poor litigant if he should pay these expenses himself."36

A more effective justice for the poor can be attained by recognizing that when the judicial process becomes the only means to effectively settle a dispute37 due process requires that an indigent have an independent right of free access to the judicial forum.38 Many states already satisfy this proposed element of due process by means of existing legislation. This legislation is in the manner of forma pauperis statutes39 which allow an indigent in legitimate civil litigation to waive court costs and proceed with his claim in the judicial forum. Further precedent and reasoning for this expansion of due process into civil adjudication appears in Hovey v. Elliott40 where a trial court refused to allow petitioner to proceed in a civil case until he paid money into the court's registry. The Supreme Court of the United States held this payment of money as a predicate to court access denied petitioner due process. In a later case, National Union v. Arnold,41 in which failure to deliver certain bonds resulted in an inability to gain entrance to the courtroom, the Court failed to apply Hovey and as a result weakened its precedential value, but not its logic. Justices Douglas and Black dissenting in Arnold felt the Hovey doctrine should be applied. Justice Black stated that from its inception due process and equal protection have meant that every defendant must be allowed to defend himself in any court where his adversary can appear and prosecute.42

Hopefully, the recognition that due process encompasses access to the judicial forum in a wider scope than pormulgated in Boddie will not be delayed. In this manner, the devastating result of the judicial system and wealth becoming synonomous could be avoided.

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37. This is essentially the test used in a limited scope by Justice Harlan in Boddie. It was only applied in a divorce action to permit free access to the courts for the impoverished litigant. See note 7.
39. See note 2.
40. 167 U.S. 409 (1897).
42. Id. at 47.