

“C.B.”,
Petitioner,
v.
ESSEX COUNTY DIVISION OF WELFARE,
Respondent.

Decided December 23, 1980

Initial Decision

SYNOPSIS

Petitioner appealed from the decision of the local welfare agency reducing her monthly Aid to Families with Dependent Children grant because of her alleged failure to pursue a personal injury claim on behalf of her child. The agency relied on *N.J.A.C. 10:81-3.38(b)2*, which requires that where a resource (or potential claim) is applicable to a child receiving benefits and the child's parents fail or refuse to cooperate in the liquidation of the resource, the child will be found ineligible for assistance. In this instance, the “resource” is a personal injury claim petitioner has on behalf of her child who fell on a flight of stairs.

The administrative law judge found that while petitioner willfully refused to pursue the personal injury claim and thus failed to cooperate in liquidating a potential resource, the sole reason for petitioner's inaction was that her religious beliefs precluded her from initiating the litigation required to pursue the claim. Thus the judge determined that the case presented the question of whether a county welfare agency may reduce an individual's AFDC grant because she refuses to pursue a personal injury claim based on the tenets of her religion.

On the basis of *Sherbert v. Verner*, 374 U.S. 398 (1963), the administrative law judge found that the State had failed to demonstrate the compelling state interest needed to justify the substantial infringement of petitioner's First Amendment rights which would result from requiring her to bring litigation to pursue the claim. Accordingly, the agency's action in reducing the monthly AFDC grant was reversed.

Theresa Kyles, *Paralegal, (Rutgers Legal Aid Clinic) for Petitioner*
Lawrence Caprio, *Assistant Essex County Counsel for Respondent*

FOLEY, ALJ:

On October 17, 1980, a hearing was held on the determination of the Essex County Division of Welfare, which reduced C.B.'s monthly Aid to

Families with Dependent Children (AFDC) grant from \$576 to \$522. The Division alleged that petitioner failed to cooperate in pursuing a claim on behalf of her child, A.B., and thus the Division removed A.B. from the grant. The first notice to reduce was dated September 4, 1980, and cited *N.J.A.C.* 10:81-3.38(a), "Assignment of Transfer of Property." An amended notice to reduce, dated September 17, 1980, was mailed to petitioner at her address, and was identical except for the citation of *N.J.A.C.* 10:81-3.38(b)1i, "Penalties," rather than *N.J.A.C.* 10:81-3.38(a).

The matter was filed in the Office of Administrative Law on September 19, 1980.

At the hearing, the initial witness was Gerald Leisten, Assistant Field Office Supervisor for the Division of Welfare. He stated his office received a memorandum from Willie Washington of the Property and Resource Unit which stated that there had been an accident in which petitioner's daughter was injured, and that C.B. had refused to take legal action. Washington, who had interviewed C.B., asked that A.B. be deleted from C.B.'s grant. C.B. refused to take legal action because she had a religious objection to filing suit on behalf of A.B. Before taking adverse action, Mr. Leisten asked that an interpretation from the State be obtained to see if respondent was on firm ground in deleting A.B. from the grant. He stated that he received a memorandum, dated August 28, 1980, from Allen Zaks, Welfare Section, and a letter, dated August 20, 1980, from John R. Simzak of the State of New Jersey, Department of Human Services, Division of Public Welfare. In the latter, it was stated that C.B. had signed an Agreement to Repay, but had refused to pursue the insurance claim herself, indicating that this would be contrary to her religious beliefs, since she is a Jehovah's Witness. Mr. Simzak stated that *N.J.A.C.* 10:81-3.38(b)2 was applicable; that A.B. was ineligible and that the personal "beliefs" of C.B. do not supercede the directives and public consideration.

Based on the letter of Mr. Simzak and the memorandum of Mr. Zaks, petitioner sent C.B. a reduction letter, dated September 17, 1980. The witness indicated that a letter with an improper citation had previously been sent to C.B.

Counsel for respondent indicated that the agency also relied on *N.J.A.C.* 10:81-3.37(b)1-3 "Potential Resources."

On cross-examination, the witness stated that it was his information that Mr. Washington informed C.B. that the respondent would require her to sue. The witness said that his service worker and Mr. Washington spoke to C.B. directly. The respondent was not able to produce a letter to C.B. advising her that it was her responsibility to sue on behalf of her daughter.

C.B. testified and stated that her daughter had had an accident in their residence a little over two years ago and that her daughter was 12 years old at the time. A.B. and six other children were running down the stairs, pushing against one another, to get outside to see an automobile accident. A.B. fell on the stairs. About an hour later, hospital emergency room x-rays showed that she had fractured a bone in her left wrist, and the next day her wrist was placed in a cast at Childrens' Hospital. Two weeks later when the cast came off, A.B. was fine. C.B. testified that the stairs were well lighted; there was no debris on them, and A.B. wore shoes with heels.

At this point, counsel for respondent stipulated that C.B. did not think she had a lawsuit.

C.B. said her husband, J.B., tried to take legal action as a result of the accident and engaged the services of Alvin R. Leonard, Esq. C.B. said she told her husband that she was doing nothing about A.B.'s accident. The witness testified that she told the lawyer how she felt, that she was a Jehovah's Witness and that "we don't participate in suing." She did not sign papers and did not sue. At the hearing, C.B. was shown her affidavit, dated August 21, 1980, in which she said she refused to pursue the suing of anyone on behalf of A.B., since to do so would be against her religion as a Jehovah's Witness. At the hearing she repeated that she refused to pursue any suit or claim. She said no one at the Essex County Welfare Board told her she had to sue her former landlord. C.B. told me that "my religion based upon suing is against our religion." She said that she never received a letter indicating the Essex County Division of Welfare required her to sue and pursue a claim. Had she received such a letter, she stated to me that she would not have sued. There was no cross-examination of C.B.

In summation, Ms. Kyles, petitioner's representative, stated that the respondent's handling of the matter was procedurally incorrect. She referred to a notice of reduction, dated September 4, 1980, and said it and not the notice of September 17, 1980, was the notice that was appealed. She was permitted to reopen her case, and the notice of September 4, 1980, was admitted into evidence. C.B. stated that she never received the notice of September 17, 1980.

Ms. Kyles cited *N.J.A.C.* 10:82-3.5, which requires written notice to individuals who are being requested or required to liquidate a resource. She said this was a procedural problem.

C.B.'s representative stated that if C.B. were to sue she would be violating her religious beliefs and that respondent had no compelling reason paramount to C.B.'s First Amendment right to exercise her religion which would require C.B. to sue. In support of this argument the cases of *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Lincoln v. True*, 408 F. Supp. 22

(W.D.Ky. 1975) were cited.

Counsel for petitioner stated the question was whether C.B. cooperated in liquidating a potential resource. He maintained that the issue was C.B.'s religious beliefs that prevented her from suing. He, thus recognizing the issue, stated the respondent acted in a reasonable manner and that respondent's action is entitled to the presumption of reasonableness.

Initially, the petitioner has the burden of proving by a preponderance of the believable evidence that the decision of the respondent to reduce her monthly grant was erroneous and should be reversed, *Atkinson v. Parsekian*, 37 N.J. 143, 149 (1962). The choice of accepting or rejecting the testimony of witnesses rests with me, the trier of the facts. I must make a reasonable choice, *Hornauer v. Division of Alcoholic Beverage Control*, 40 N.J. Super. 501, 506 (App. Div. 1956).

The regulations applicable to this matter are N.J.A.C. 10:81-3.37(b)3, which defines potential resources as those which are neither exempt nor available to meet the current needs of the eligible unit. The liquidation or conversion of potential resources is a joint responsibility of the County Welfare Agency and the parent(s) or other payee of assistance granted to the eligible unit.

N.J.A.C. 10:81-3.38(b)1i, dealing with penalties, states that when a resource is applicable to an otherwise eligible child and the parent(s) fails or refuses to cooperate in liquidation of the resource or to sign an Agreement to Repay when one is required, only the child will be found ineligible for assistance.

After listening to the testimony of the witnesses and reviewing the exhibits and applying the pertinent regulations, I **FIND** the following facts:

1. On September 29, 1978, A.B., an infant of the age of 12 and the daughter of J.B. and C.B. fell on the stairs in the premises in which she resided with petitioner and broke a small bone in her left wrist. A.B. was x-rayed at the hospital on the day she fell, and the following day her wrist was placed in a cast, where it remained for approximately two weeks.

2. J.B. retained Alvin R. Leonard, Esq., to pursue a claim on behalf of A.B. against James H. Baldwin, *et al.*, the landlord of the premises in which A.B. resided and where she fell.

3. A.B. had the right to have her father sue on her behalf for the pain and suffering she experienced from sustaining a broken wrist, and her father and also her mother, the petitioner herein, had a derivative claim for medical expenses resulting from A.B. being x-rayed and her wrist being casted in the hospital. These claims possessed by A.B. and her parents were potential resources.

4. J.B., to whom Alvin R. Leonard, Esq., had written to and spoken to

on the telephone, does not desire to pursue a claim on behalf of A.B., nor has J.B. resided with petitioner, who has custody of A.B. for at least four years.

5. Mr. Leonard has closed his file and intends to take no further action on behalf of A.B. because J.B. has advised him that he no longer wants him to pursue the matter and that his wife is a Jehovah's Witness, who does not believe in litigation and who also does not want to proceed with the matter.

6. The fact one does not have liability insurance does not prevent an injured party from pursuing a claim against him.

7. C.B. is a Jehovah's Witness. One of the tenets of that religion, is that it is contrary to that religion for a Jehovah's Witness to sue or pursue a claim against anyone.

8. The respondent on or about July 7, 1980 and on August 20, 1980, through its authorized agents, Willie Washington and a member of Mr. Gerald Leisten's staff, interviewed C.B. and advised her that her grant would be jeopardized and that she had a duty to cooperate by liquidating a potential resource, that is, by pursuing a claim on behalf of A.B. against her landlord. On both occasions, C.B. willfully refused to do so, stating that to sue would be violative of her religious belief as a Jehovah's Witness. Notwithstanding this, C.B. did not receive a written request from respondent to consent to and to take the necessary action to liquidate a potential resource, that is, an attempt to settle or, failing that, a lawsuit on behalf of A.B., which would include a derivative claim by J.B. and C.B. for the hospital bills, they, individually or together, owed. Petitioner was aware of her duty to cooperate in liquidating these potential resources. Any violation of *N.J.A.C.* 10:28-3.5 was therefore insignificant in the totality of the circumstances. However, as early as on or about July 7, 1980 and again on August 21, 1980, by way of her affidavit, C.B. clearly expressed to respondent that it was contrary to her religion as a Jehovah's Witness to pursue a claim or sue anyone. This was vividly reaffirmed by C.B. at the hearing.

9. A.B.'s claim is viable, she being a minor. She has until March 8, 1986, to file a lawsuit for her injury, *See, N.J.S.A.* 2A:14-2 and *N.J.S.A.* 2A:14-21. Her parents, J.B. and C.B., together, or individually, possess a derivative claim for their expenses as a result of A.B.'s injury, which derivative claim is viable until March 8, 1986, *See, N.J.S.A.* 2A:14-2.1.

10. C.B. received both of respondent's notices of intention to reduce her grant, and the citation of *N.J.A.C.* 10:81-3.38(a) in the original notice was not significant in that both notices clearly informed C.B. that her grant was being reduced from \$576 to \$522, effective October 1, 1980, because of her failure to cooperate in pursuing a claim on behalf of her child, A.B.

11. C.B. willfully and intentionally refused to pursue a claim on behalf of her daughter, A.B., and herself, derivatively; this was a failure to cooperate in liquidating potential resources, violative of *N.J.A.C.* 10:81-3.38(b)1i, but the reason for C.B.'s inaction was because for her to take action would be contrary to her religious beliefs as a Jehovah's Witness.

The question to be answered is whether a county welfare agency may reduce an individual's AFDC grant because she refuses, based on the tenets of her religion, to pursue a personal injury claim on behalf of her minor child. In my judgment, under the facts of this case and the applicable law, the answer is no.

The Free Exercise of Religion Clause of the First Amendment of the United States Constitution applies to the state through the Due Process Clause of the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 *U.S.* 296, 303 (1939); *Sherbert v. Verner*, 374 *U.S.* 398 (1963).

Sherbert is the leading case which deals with a claimed infringement upon free exercise rights in the area of receipt of benefits. In that case, appellant was fired because she refused to work on Saturday, in keeping with the requirements of her religion. She was a member of the Seventh Day Adventist Church, and Saturday was the Sabbath Day of her faith. She was unable to find other employment because she would not take Saturday work; thus she applied for unemployment compensation benefits under the South Carolina Unemployment Compensation Act. Her application was denied, as under state law a person is ineligible for such benefits if he fails without good cause to accept offered, available and suitable work. *Id.* at 400, 968.

This denial was ultimately affirmed by the South Carolina Supreme Court, which rejected appellant's contention that, as applied to her, the disqualifying provisions of the statute abridged her right to the free exercise of her religion. The court held that the statutory restriction infringed no constitutional liberties because such a construction of the statute places no restriction upon the appellant's freedom of religion nor does it in any way prevent her in the exercise of her right and freedom to observe her religious beliefs in accordance with the dictates of her conscience.

The United States Supreme Court reversed, finding that the disqualification from benefits imposed a burden on appellant's free exercise of her religion:

[N]ot only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.

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Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship. *Sherbert v. Venner*, 374 *U.S.* 398, at 404 (1963).

The Court next considered whether some compelling state interest found in the eligibility provisions of the statute justified the substantial infringement of appellant’s First Amendment right. The Court stated that:

It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. [*Id.* at 406]

The Court found no such abuse or danger had been advanced in *Sherbert* by the appellees. The Court stated it was merely reaffirming a principle that it announced a decade and a half before, in *Everson v. Board of Education*, 330 *U.S.* 1 (1946) namely, that no state may “exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believer Presbyterians, or the members of any other faith, *because of their faith, or lack of it*, from receiving the benefits of public welfare legislation,” *Id.*, at 16.

The analysis and principles of *Sherbert* were applied and somewhat expanded in several later cases. The plaintiff in *Lincoln v. True*, 408 *F. Supp.* 22 (W.D.Ky. 1975) resigned her job of 21 years with a tobacco company because the elders of her Jehovah’s Witness group told her that working with tobacco products was against God’s will and that she would be expelled if she did not resign. Unemployment compensation was denied on the basis that this was a voluntary quitting without good cause. The court relied on *Sherbert* in ordering that the benefits be paid and in finding that there was a violation of the exercise of plaintiff’s religious beliefs.

In *Stevens v. Berger*, 428 *F. Supp.* 896 (E.D.N.Y. 1977), home relief was terminated and AFDC denied because parents, acting on their religious beliefs, refused to obtain Social Security numbers for their four minor children. The court, after determining that the parents’ convictions and beliefs regarding Social Security numbers was sincere and that it was rooted in and based upon religious or theological conviction rather than secular (*e.g.*, purely social, political or moral view or ideology) principles, enjoined, three public assistance agencies from denying to the parents and their children welfare benefits for which they otherwise qualified solely because the parents refused, for religious reasons, to obtain social security numbers for their children.

I **FIND** as a fact, based on my observations of C.B., listening to her testify and the exhibits which I have reviewed, that C.B.’s belief and conviction is truly held and is sincere and that it has its foundation in

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theological and religious views rather than secular. As to the latter, the following statement is appropriate:

A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief. Although a determination of what is a "religious" belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests. Thus, if the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses. *Wisconsin v. Yoder*, 406 U.S. 205 at 215 (1972).

I further **FIND** that the agency has not successfully shouldered its heavy burden of defending its regulation and action in this case. It has not demonstrated a compelling state interest which is paramount to C.B.'s free exercise of her sincere and theologically grounded views. The following excerpt from *Stevens, supra*, at 906, is applicable:

Once a bona fide First Amendment issue is joined, the burden that must be shouldered by the government to defend a regulation with impact on religious actions is a heavy one. The basic standard was set out for freedom of religion cases by the Supreme Court in *Sherbert v. Verner*, 374 U.S. 398, (1963). There the Court said that a "compelling state interest" must be demonstrated.

It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, [o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation, *Thomas v. Collins*, 323 U.S. (1944).

The Court has recently emphasized this norm in *Elrod v. Burns*, 427 U.S. 347 (1976):

It is firmly established that a significant impairment of First Amendment rights must survive exacting scrutiny. . . . Encroachment "cannot be justified upon a mere showing of a legitimate state interest." . . . The interest advanced must be paramount, one of vital importance, and the burden is on the government to show the existence of such an interest. *Id.*, at 362.

When conduct or actions have invariably posed some substantial threat

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to public safety, peace or order, the Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, *See, Sherbert, supra*, at 969-970. C.B.'s conduct in this case, however, poses no threat to public safety, peace or order. In the instant matter the agency has failed to demonstrate a compelling state interest. In its post-hearing memorandum, dated October 28, 1980, it merely alluded to a "substantial" state interest of [p]ossible reimbursement to the public for some of "its" staggering public welfare costs.

In closing, I reject as frivolous the agency's request that I consider that this case was heard because C.B. found it religiously objectionable to bring court suit or pursue her legal remedy and yet she had no objection to pursuing her legal remedy against the respondent agency through the filing of a request for an administrative hearing. In advancing this point, the agency overlooks the fact that it instituted the action against C.B. by reducing her AFDC grant and that her request for a hearing on September 15, 1980, was by way of a response or answer to the action of the agency and not a lawsuit as that term has been defined. *Black's Law Dictionary*, Fifth Edition, (1979), defines a lawsuit as a:

vernacular term for a suit, action, or cause instituted or 'depending' between two private persons in the courts of law. A suit at law or in equity; an action or proceeding in a civil court; a process in law instituted by one party to compel another to do him justice.

There was no inconsistency on the part of C.B. In the instant matter I **FIND** that C.B.'s religious belief is involved, that it is sincerely held, that it is based upon her theological views, and that the agency has failed to demonstrate a compelling state interest that is paramount to C.B.'s right to freely exercise her religion, which is constitutionally protected by the First Amendment. The respondent agency has unconstitutionally infringed upon C.B.'s right to freely exercise her religion, and I, therefore, **ORDER** that the action of the respondent agency in reducing C.B.'s monthly AFDC grant from \$576 to \$522 be *REVERSED* and that her grant be restored to \$576 a month.

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After reviewing this Initial Decision, the Division of Public Welfare on January 22, 1981 issued the following Final

Decision:

The Division determined that the central issue in the case was not whether there had been an infringement of petitioner’s religious beliefs, but whether the local agency had correctly applied the regulation in question. On that basis, the local agency’s action was affirmed.