

mu news

was the Fourteenth Amendment. It cited, respondent had won a \$112,000 judgment against both the officer and the city.

CA 3 affirmed that judgment against the city under state law. It then granted jurisdiction by virtue of the existence of a nonfrivolous federal constitutional claim.

In Flint v. City of Flint, 437 U.S. 1, we denied the right of a plaintiff to sue a city - on grounds of jurisdiction. 77-657 Flint v. Gagliardi

LFP's Memorandum - January 13, 1978 Conference
List 1, Sheet 2

This case presents an interesting, and far from easy, case of pendent jurisdiction. Respondent, whose son had been shot by a police officer, brought suit in the federal court against the officer and the city. Her complaint, as amended in the court of appeals, was predicated both on 1983 and implied cause of action under the Fourteenth Amendment and 1331.

CA 3 held that federal jurisdiction existed because the question whether a city can be sued directly under the Fourteenth Amendment - not yet decided by this Court - is a nonfrivolous federal constitutional claim. The only theory of liability asserted against the city was

was the Pennsylvania Wrongful Death Statute. At trial, respondent had won a \$116,000 judgment against both the officer and the city.

CA 3 sustained this judgment against the city under state law, finding pendent jurisdiction by virtue of the existence of a nonfrivolous federal constitutional claim.

In Aldinger v. Howard, 427 U.S. 1, we denied the right of a plaintiff to assert - on pendent jurisdiction basis - a state claim where the only basis for federal jurisdiction was a 1983 suit against a municipality. The rationale there was that a municipality could not be sued under 1983, and therefore - in effect - the federal claim was frivolous. Aldinger was distinguished in the present case by virtue of the federal claim being under the Fourteenth Amendment and § 1331.

As the cert memo point, CA 3 has apparently devised a method "cleverly" to circumvent Aldinger (if it remains as good law), and also to obtain a federal forum for a claim against a municipality without actually demonstrating the validity of the federal claim.

Although the author of the cert memo states that "the cumulative result is a discomfoting one", he thinks the impact of the CA 3 opinion is likely to be quite limited.

I am not so sure of this.

In any event, I think we should discuss the case, and probably hold it for Monell and then possibly decide whether to take this case as well as 77-688 - Lowell School District v. Kerr, or await opportunities that may present these important issues in a cleaner fashion.