

NUMBER 04-374

COURT OF APPEAL, THIRD CIRCUIT

STATE OF LOUISIANA

MR. DARRYL J. SIMMONS, ET AL.

Plaintiffs - Applicants

Versus

SHERIFF HAL TURNER, ET AL.

Defendants - Respondents

On appeal from the 33rd Judicial District Court [No. 2003-528], for the Parish of Allen, State of Louisiana; the Honorable Patricia C. Cole, District Judge, presiding.

Woodard, J., concurring.

I am constrained to concur in the result that the Plaintiffs are not entitled to a jury trial, even on their § 1983 claims. In *Felder v. Casey*,¹ the U.S. Supreme Court found that a state law, requiring plaintiffs to notify governmental entities a specified number of days before they could file suit against the entity, unduly burdened the federal right, which §1983 created, and was part and parcel of §1983's remedy. It seems counterintuitive that the Court would find such a notice-of-claim statute to unduly burden the right, yet find that a law barring a jury trial would not unduly burden the right.

Furthermore, the Court in *Dice v. Akron*² stated: "Right to trial by jury is too substantial a part of the rights accorded by the Act to permit it to be classified as a mere local rule of procedure."³ Accordingly, it found that the state was required to

¹487 U.S. 131, 108 S.Ct. 2303 (1988).

²342 U.S. 359, 72 S.Ct. 312 (1952).

³*Id.* at 363.

provide a jury trial. However, that case involved FELA, a different federal statute. FELA provides for the right to a jury trial within the act itself.

Conversely, as the majority point out, in *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*,⁴ the U.S. Supreme court made it clear that right to a jury trial, in §1983 actions, stems from the 7th amendment which is inapplicable to the states. Interestingly enough, in that case, the Supreme Court used the 7th amendment analysis to uphold the plaintiffs entitlement to a jury trial, even though the 1983 action involved a taking, traditionally a claim in which plaintiffs were not entitled to a jury trial, excluding the issue of calculating just compensation. However, because it has not explicitly held that a jury trial is part and parcel of the remedy in a 1983 action at law, I must concur in the result.

⁴526 U.S. 687, 119 S.Ct. 1624 (1999).