Bolden v Grand Rapids Operating Company

Civil Rights and the Great Migration

239 Mich 318 (1927)

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Interior of the Keith Theater.

The industrial revolution brought millions of immigrants to American cities. During and after World War I, it brought millions of black migrants from the South to northern cities. Michigan's civil rights laws were as egalitarian as those of any other state, but questions as to their interpretation and enforcement developed as black migration increased. In the late 1920s, the legislature and Supreme Court extended and modified Michigan law to keep pace with its growing African-American population, which was increasingly assertive of its rights.

By the end of the nineteenth century, the federal government had largely abandoned the effort to guarantee equal rights to former slaves and their children. In 1883, the United States Supreme Court held that Congress could not prohibit segregation or discrimination by restaurants, theaters, railroads, or in other places of "public accommodation."[1] However, many northern states enacted their own civil rights laws to prohibit discrimination after 1883. For example, Michigan enacted a civil rights law in 1885. The Michigan Supreme Court, in *Ferguson v Gies* (1890), interpreted it as prohibiting "separate but equal" accommodations. In rather paternalistic terms, the Court held that "The law is tender, rather than harsh, towards all infirmity; and, if to be born black is a misfortune, then the law should lessen, rather than increase, the burden of the black man's life."[2] Nonetheless, in 1896, in the infamous case of *Plessy v Ferguson,* the United States Supreme Court allowed states to impose segregation in such places if the results were "separate but equal," the formulation the Michigan Court had previously rejected. Similarly, the United States Supreme Court acquiesced to practices that resulted in the virtual disfranchisement of blacks in most southern states.

The United States Supreme Court's decision in *Plessy v Ferguson* may have caused the Michigan courts to retreat from their prior view and interpret the state's laws in a more restrictive fashion. Thus, in 1908 the Michigan Supreme Court decided that a company operating a ferry and amusement park at Belle Isle could refuse admission to blacks. "Theaters, race tracks, private parks, and the like, are private enterprises," the Court held. They were not "common carriers," and thus were outside the scope of the state's civil rights laws, "unless there be some statute regulating their business."[3]

The next year, the Grand Rapids Medical College expelled two black students after several white students threatened to leave the college if the blacks were allowed to return.[4] The Kent County circuit court ordered the college, as a "quasi-public institution," to admit them, but the Michigan Supreme Court overruled it. In a strained decision, the Court held that "private institutions of learning…may discriminate by sex, age, proficiency in learning, and otherwise," yet, once admitted, the black students had a right not to be expelled for arbitrary reasons like race. Nevertheless, the Court maintained that it lacked the power to issue writs of mandamus to enforce private contracts, thus providing no remedy for the wrong.[5]

In 1919, the legislature revised the 1885 civil rights act. The act guaranteed to everyone in the state "full and equal accommodations, advantages, facilities and privilege of inns, restaurants, eating houses, barbershops, public conveyances on land and water, theaters, motion picture houses, and all other places of public accommodation and amusement and recreation and all public educational institutions." The act also provided for fines and imprisonment for those who violated the statute.

Great demographic changes in Michigan would soon provide an opportunity to see how far the new civil rights act extended. Black Americans had been leaving the Deep South for border states for several decades; in the early 1900s, they began to be attracted to northern cities. Crop failures augmented segregation,

discrimination, and lynchings as incentives to leave the South, while growing industrial employment made the North attractive. This was especially the case after the First World War and the immigration restriction acts of 1921 and 1924 cut off the European immigrant labor supply.

In what has come to be known as the Great Migration, as many as half a million blacks left the South between 1915 and 1920; 300,000 in the summers of 1916 and 1917 alone. Northern cities like New York and Chicago acquired hundreds of thousands of black residents.

Because of the potential for employment in the auto industry, Detroit was the principal Michigan destination for black migrants. Henry Ford was a pioneer in black industrial employment, hiring 10,000 blacks to work in all job categories in his massive, state-of-the-art River Rouge plant. Though blacks were often restricted to hot, heavy, and unpleasant jobs, these auto jobs paid well and laid the foundation for an educated black professional middle class.

Even smaller cities like Grand Rapids felt the effects of the Great Migration. Grand Rapids established itself as the finest furniture-making city in the United States and attracted many different immigrant groups to that industry.[6] Its black population remained in the hundreds in the late nineteenth century, reached a thousand in 1920, and had nearly tripled by 1930. Their increasing numbers in northern cities, where they could vote and were supposed to enjoy equality before the law, led the new generation of black migrants to begin to assert their rights, especially after some of them returned from fighting for democracy in World War I. Even the small African-American community of Grand Rapids established two hallmarks of northern black consciousness shortly after World War I: a local branch of the National Association for the Advancement of Colored People, and a black-owned newspaper, the *Michigan State News*.[7]

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Exterior of the Keith Theater.

Keith Theater playbill published in the December 12, 1924, edition of the *Grand Rapids Press*.

The local NAACP began to promote several cases to test the state's civil rights law.[8] The principal case involved Grand Rapids dentist Emmett Bolden, a Grand Rapids native who had attended the College of Dentistry at Howard University in Washington, D.C., who was denied a first-floor ticket at the Keith Theater and was told he could only purchase a balcony ticket. Bolden's attorney was New York City native and World War I veteran Oliver M. Green. Green had apparently negotiated a settlement from the Grand Rapids Operating Company, a motion-picture theater, for two of his other clients. The opposing law firm, representing the theater, offered Green a job in an attempt to buy him off. Green persisted, though, bringing Bolden's case in the superior court of Grand Rapids.

Bolden, like other blacks, had been restricted to the balcony section in the Keith Theater. Though the civil rights act was a criminal statute, Bolden sued the Grand Rapids Operating Company, owners of the Keith Theater, for $1,000 in civil damages. The company denied that restricting blacks to the balcony violated the act or, in the alternative, that the act provided for civil damages. The company tried to wear Bolden out with repeated costly procedural motions. Bolden faced a hostile judge, Leonard Verdier, who had recently sentenced a black man to life in prison for armed robbery. "If you were in some other states, you would have been lynched," he said in court.[9] Verdier had also sponsored a bill to prohibit racial intermarriage when he was a state senator. In July 1926, Judge Verdier decided that the theater was a private enterprise, and thus the civil rights act requirement that the theater treat blacks equally might in fact deprive the theater owner of his property without due process of law.[10]

The local NAACP was divided over whether to make an appeal to the Michigan Supreme Court. While older residents and professionals like Bolden and Green were concerned about segregation and what was often referred to as "social equality," new migrants had more pressing interest in employment opportunities. The Grand Rapids black community was similarly conflicted over a proposal for a National Urban League branch in the city, for the Urban League was associated with the quasi-separatist and

economic self-help philosophy of Booker T. Washington, whereas the NAACP was committed to political and social agitation for integration. Much-needed assistance came from the NAACP national office and the Detroit branch.[11] On appeal, the theater owners argued that the civil rights act was an invalid exercise of the police power—the general power of the state to legislate for the safety, health, welfare, and morals of the people—and that it allowed only criminal prosecution, not civil suits. They pointed to several United States Supreme Court decisions that had struck down state regulations as violations of the due process clause of the Fourteenth Amendment.

The Michigan Supreme Court unanimously overturned Judge Verdier's decision and allowed Bolden's suit. The Court returned to the broad, egalitarian interpretation that it had adopted in *Ferguson v Gies*. It noted that the civil rights law was intended to benefit blacks who had suffered discrimination and therefore were permitted to vindicate their rights under the law. Thus, a suit to sustain the right to equal accommodations was permissible. Justice Sharpe quoted the earlier case of *Lepard v Michigan Central Railroad Co.* for the proposition that "It is a well-established principle that the violation of a statutory duty is the foundation for an action in favor of such persons only as belong to the class intended by the legislature to be protected by such statute."[12] He concluded, "It therefore seems clear to us that a person denied admission, in violation of its provisions, has a right of action for such damages as he sustained thereby."[13] After a new trial in Grand Rapids Superior Court, the Operating Company agreed to settle the case with Bolden for $200.[14]

While the legislature had adopted a criminally enforceable civil rights act, such an act would be worth little if local prosecutors did not enforce the laws vigorously—and most did not. *Bolden,* in giving blacks who suffered discriminatory treatment a civil remedy, allowed them to vindicate their own rights when local authorities could or would not. Later, federal civil rights laws also adopted this tactic, turning civil plaintiffs into "private attorneys general" to vindicate egalitarian social policy. But this tactic did not ensure full compliance with civil rights laws for, as Bolden and Green experienced it, private litigation was costly and time-consuming. The next step in the enforcement of civil rights laws, the establishment of independent administrative agencies to bring suits, came after the next world war.

It might be said that *Bolden* did no more than vindicate the obvious intent of the Michigan legislature, whose revised civil rights statute was necessitated by vacillating court decisions of 1908–1909. But the *Bolden* decision was broad and liberal, one of many judicial decisions, state and federal, that began to chip away at state-enforced racial inequality. In the early 1900s, the United States Supreme Court struck down debt-peonage laws that attempted to keep blacks tied to the land and prevented their northward migration.[15] It overturned the "grandfather clause" by which southern states exempted whites from literacy tests that prevented blacks from voting.[16] It also prevented border-state cities from adopting zoning laws that imposed residential apartheid.[17] In Michigan, just before the *Bolden* decision, the Detroit Recorder's Court exonerated the family of Ossian Sweet. Dr. Sweet had moved his family into a home in a "white" neighborhood. In an attempt to drive the Sweet family from the neighborhood, a mob of whites surrounded the house. A shot fired by Dr. Sweet's brother, Henry, killed a member of the mob. All of the occupants of the home at the time of the shooting were charged with murder. The first trial ended in a mistrial because of a hung jury. Following a second trial in which Henry Sweet was acquitted, the charges against all the other occupants of the house were dropped.[18] These were all signs that, accompanied by the social and political growth of the northern black population, the law was taking a turn back from its late-nineteenth century abandonment of the principle of equality before the law. ■

FOOTNOTES

1. *Civil Rights Cases,* 109 US 3; 3 S Ct 18; 27 L Ed 835 (1883).
2. *Ferguson v Gies,* 82 Mich 358, 367; 46 NW 718 (1890); Mitchell, *From slavery to Shelley—Michigan's ambivalent response to civil rights,* 26 Wayne L R 1, 19–20 (1979); Norris, *A perspective on the history of civil rights law in Michigan,* Detroit C L R 578 (1996).
3. *Meisner v Detroit, BI & W Ferry Co,* 154 Mich 545; 118 NW 14 (1908).
4. Jelks, *Making opportunity: The struggle against Jim Crow in Grand Rapids, Michigan, 1890–1927,* Michigan Historical Review 19:2, 27–29 (1993); *Won't Study with Negroes,* New York Times, November 21, 1908, p 1.
5. *Booker v Grand Rapids Medical College,* 156 Mich 95; 120 NW 589 (1909).
6. Buffum & Whaples, *Fear and loathing in the Michigan furniture industry: Employee-based discrimination a century ago,* Economic Inquiry 33, 234–252 (1995).
7. Jelks, *Making opportunity, supra* at 30.
8. The Grand Rapids branch began the litigation; it later ran out of money and lost interest. The Detroit branch and the national office then supported the suit.
9. Jelks, *Making opportunity, supra* at 42–43.
10. *Id.* at 43.
11. Jelks, *Race, Respectability, and the Struggle for Civil Rights: A Study of the African American Community of Grand Rapids, Michigan, 1870–1954* (Ph.D. diss, Michigan State University, 2001), pp 192–193.
12. *Lepard v Michigan Cent R Co,* 166 Mich 373, 383; 130 NW 668 (1911).
13. *Bolden v Grand Rapids Operating Corp,* 239 Mich 318, 328; 214 NW 241 (1927).
14. Jelks, *Making opportunity, supra* at 47.
15. *Bailey v Alabama,* 219 US 219; 31 S Ct 145; 55 L Ed 191 (1911).
16. *Guinn v United States,* 238 US 347; 35 S Ct 926; 59 L Ed 1340 (1915).
17. *Buchanan v Warley,* 245 US 60; 38 S Ct 16; 62 L Ed 149 (1917).
18. It is worth noting that Clarence Darrow served as the defense attorney in both trials and that the trials were heard by Judge Frank Murphy, who was later appointed to the United States Supreme Court.