

89 S.Ct. 60
Supreme Court of the United States

Velma L. MENGELKOCH et al.
v.
INDUSTRIAL WELFARE COMMISSION et al.

No. 375.

|
Oct. 28, 1968.

|
Rehearing Denied Dec. 9, 1968.
See 393 U.S. 993, 89 S.Ct. 443.

Synopsis

Appeal from United States District Court for the Central District of California, sitting as three-judge court, dissolving itself as such three-judge court, 284 F.Supp. 950, and appeal from order of the United States District Court for the Central District of California dismissing the cause, 284 F.Supp. 956. The United States Supreme Court held that it was without jurisdiction to entertain the appeals.

Order of three-judge court vacated and case remanded; appeal from order of single judge dismissed.

Attorneys and Law Firms

****60 *83** Marguerite Rawalt, for appellants.

Thomas C. Lynch, Atty. Gen. of California, and Edward M. Belasco, Jay L. Linderman and William L. Zessar, Deputy Attys. Gen., for appellees.

Opinion

Footnotes

- * We think it makes no difference in principle that in *Wilson v. City of Port Lavaca* the single judge actually adopted the opinion of the three-judge court as his own.

PER CURIAM.

A three-judge federal court, convened pursuant to 28 U.S.C. s 2281, determined that ‘there is no jurisdiction for a three-judge court’ and entered an ****61** order dissolving itself. 284 F.Supp. 950, 956. The single district judge in whose court the case was originally filed considered further and dismissed the case without prejudice under the doctrine of abstention, stating in his memorandum opinion that ‘(t)he order dissolving the three-judge court is incorporated in this memorandum by reference.’ 284 F.Supp. 956, 957. Appellants appeal from both judgments. In these circumstances, we have no jurisdiction to entertain a direct appeal from the decision of the single judge; such jurisdiction is possessed only by the appropriate United States Court of Appeals. 28 U.S.C. s 1291. Moreover, we have held that when, as here, a ***84** three-judge court dissolves itself for want of jurisdiction, an appeal lies to the appropriate Court of Appeals and not to this Court. *Wilson v. City of Port Lavaca*, 391 U.S. 352, 88 S.Ct. 1502, 20 L.Ed.2d 636.*

Although the appellants have lodged in the Court of Appeals for the Ninth Circuit a protective appeal from the decision of the single judge, it does not appear from the record that such an appeal has been filed with respect to the three-judge order. Therefore, we vacate the order of the three-judge court and remand the case to the District Court so that a timely appeal may be taken to the Court of Appeals. See *Wilson v. City of Port Lavaca*, *supra*; *Pennsylvania Public Utility Comm’n v. Pennsylvania R. Co.*, 382 U.S. 281, 282, 86 S.Ct. 423, 15 L.Ed.2d 324. The appeal from the decision of the single judge is dismissed for want of jurisdiction.

It is so ordered.