

VOL 53 ISS 6 ART. 10 | I | THE STUMP DEFINITION OF JUDICIAL ACT

In *Stump v. Sparkman*,¹⁹ the Supreme Court for the first time established what constitutes a judicial act for purposes of judicial immunity.²⁰ The Court developed a two-factor test for determining whether a judge's act is a "judicial" one.²¹ The first factor - whether the act was a function normally performed by a judge - relates to the "nature of the act itself."²² The second factor - whether the parties dealt with the judge in his judicial capacity - looks to the "expectations of the parties."²³ In order to understand the broad nature of the Stump definition, it is necessary to examine the facts surrounding this controversial decision.

In *Stump*, a document containing a petition to have a tubal ligation performed on a minor was presented to Judge Stump by the minor's mother.²⁴ She stated in the petition that her daughter was 15 years old and somewhat retarded, although the girl had attended public school and had been promoted with her class each year.²⁵ The petition also stated that the minor had stayed out overnight on several occasions with youths and older men, and that as a result of this behavior and her low mentality a tubal ligation would be in the child's best interests and would prevent unfortunate circumstances from occurring.²⁶ The judge approved and signed the petition in an ex parte proceeding without a hearing, and without notice to either the girl or to anyone on her behalf.²⁷ The operation subsequently took place.

Two years later, and after her marriage, the girl discovered that she had been sterilized.²⁸ She brought a section 1983 action for damages against the judge, claiming a deprivation of her constitutional rights.²⁹ The Supreme Court in a five-to-three decision held that the judge was absolutely immune from damages under the doctrine of judicial immunity.³⁰ The Court had no difficulty classifying the action as a judicial function: It stated that state judges are often called upon in their official capacity to approve petitions relating to the "affairs of minors," and that Judge Stump was "acting as a county circuit court judge."³¹

The normal judicial function factor of the definition was broadly applied by the majority: Approving a petition for a tubal ligation was equated with the routine approval of a petition relating to the affairs of a minor.³² Thus, the act in question need not be performed often or even at all in order to be considered a normal judicial function.³³ Although less clearly developed in *Stump*, the second factor - dealing with the judge in his judicial capacity -



was applied just as broadly. According to the Court, because the mother presented the sterilization petition to the judge and he signed it, the parties dealt with the judge in his judicial capacity.³⁴ Under this reading, a judge's approval of a mother's petition to lock her daughter in the attic would be considered a judicial act merely because the mother had submitted her petition to the judge in his official capacity.³⁵

Such a broad interpretation of "judicial act" demonstrates how far the Supreme Court is willing to go in upholding the doctrine of judicial immunity, even in the face of gross unfairness in the judicial process.³⁶ Although Stump makes clear how paramount and unyielding the policies behind judicial immunity are, it explains neither the precise meaning of a judicial act, nor how to apply the majority's definition to a given act.

(Fordham Law Review. Joseph Romagnoli)

Footnotes

²⁰. See *id.* at 360.

²¹. See *id.* at 362.

²². *Id.*

²³. *Id.*

²⁴. See *id.* at 351.

²⁵. *Id.*

²⁶. *Id.*

²⁷. See *id.* at 360.

²⁸. *Id.* at 353.

²⁹. *Id.* at 353 & n.2.

³⁰. See *id.* at 364.

³¹. *Id.* at 362.

³². See *id.* at 365-67 (Stewart, J., dissenting); see also Rosenberg, *supra* note 12, at 848 (Stump Court's broad application of judicial act test, and failure to formulate a "narrow [definition] ... results in little, if any, protection against even the worst judicial excesses."); Judicial Misconduct, *supra* note 3, at 573 ("Nor do judges 'normally' approve a mother's request to have her daughter

sterilized."); Judicial Act and Jurisdiction, *supra* note 12, at 118-19 ("[A]pproval of a parent's decision regarding medical treatment for a minor, is not a function normally performed by a judge."); Judicial Immunity, *supra* note 14, at 818 ("Court implied that a petition which would deprive a minor of a fundamental right was no different from a petition to settle a minor's claim.") (footnote omitted); 11 Ind. L. Rev. 489, 497 (1978) ("The Court did not contend that normal judicial functions include approval of petitions for sterilization but reasoned that consideration of a petition relating to the affairs of a minor is the type of action a judge is normally called upon to review in his official capacity.").

³³. See *Stump v. Sparkman*, 435 U.S. 349, 362 n.11 (1978) ("Even if it is assumed that in a lifetime of judging, a judge has acted on only one petition of a particular kind, this would not indicate that his function in entertaining and acting on it is not the kind of function that a judge normally performs."); But see *id.* at 367 (Stewart, J., dissenting) (the act "was in no way an act 'normally performed by a judge.' Indeed, there is no reason to believe that such an act has ever been performed ..

³⁴. See 435 U.S. at 362.

³⁵. See *id.* at 367 (Stewart, J., dissenting).

³⁶. See *id.* at 359 ("A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors."); *Arsenaux v. Roberts*, 726 F.2d 1022, 1023 (5th Cir. 1982) (same) (quoting *Stump*, 435 U.S. at 359); *Beard v. Udall*, 648 F.2d 1264, 1269 (9th Cir. 1981) (per curiam) ("The fact that a judge commits 'grave procedural errors' is not sufficient to deprive a judge of absolute immunity.") (quoting *Stump*, 435 U.S. at 359).