U.L. v. Carter

General

Memo of Procedural History

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CACCO 225D

Urban League Memo
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Proceedural History

The trial court held for the plaintiffs against eleven defendants: Cranbury, East Brunswick, Edison, Monroe, North Brunswick, Old Bridge (then Madison), Piscataway, Plainsboro, Sayreville, South Brunswick, and South Plainfield. Mount Laurel II, 456 A 2d 390, 487. The Appellate Division reversed on the appeal of only seven of these defendants. Four municipalities (Old Bridge, Sayreville, Edison, and North Brunswick) did not appeal. On further appeal to the state supreme court, the appellant original plaintiffs sought reversal of the Appellate Division's opinion. They did not include the four original defendants who were not part of the appeal to the Appellate Division. The Supreme Court reversed the Appellate Division opinion but did not follow the trial court's determination of the issues. ML II, at 489. The question to be answered is what is the status of those four defendants on remand to the trial court?

The general rule is that the principle of Res judicata prohibits the reopening of suits against nonappealing parties:

> Where less than all of several coparties appeal from an adverse judgement, it is generally held that a reversal as to the parties appealing does not necessitate ~~aaxxxxxxxxal~~ or justify a reversal as to the parties not appealing.
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> C.J.S. 1920

However, there is a generally recognized exception:

> Where the judgement is not severable, or where the rights and interests of the parties are so intermingled and interdependant that reversal in favor of one would injuriously affect the rights of his coparties, the court, if reversal is proper as to the appellant, may reverse as to the nonappealing parties.
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> C.J.S. 1920

The case law in New Jersey is very sketchy but supportive of this rule. See Potter v. Hill, 128 A 2d 705(N.J. Super. 1957) and E. and K. Agency v. Van Dyke, 60 N.J. 160 (1972). In both these cases it was an adverse judgement against them that was latter reversed and that reversal was extended to the nonappealing defendant.

Urban League

In Urban League we are faced with a different problem; the verdict as to the defendants was upheld although modified. It was only the Appellate Division's opinion which was reversed. The cases cited would have been more appropiate to the four nonappealing municipalities after the Appellate Division had reversed the trial court's decision against the seven appealing municipalities. The ability of the court to reopen a case and impose more requirements on the nonappealing parties is questionable.

The general rule as to joinder of parties in New Jersey is very liberal. New Jersey Court Rule 4:30 Misjoinder and Nonjoinder of Parties, states that "parties may be dropped or added by court order on motion by any party or on its own motion." In general this means that the addition of parties will be done "where the ends of justice require." Sperry and Hutchinson Co. v. Margetts, 25 N.J. Super. 568, affirmed, 15 N.J. 203 (1953). This would seeem to mean that we could argue that the desire of the Supreme Court in Mount Laurel II to facilitate the Mount Laurel remedy is an instance where justice requires that these four defendants be part of the remand proceedings instead of having further litigation on claims against them. Certainly, the Court would not allow them to proceed under the remedy fashioned in the trial court which is what would happen if they were not part of this remand.

The "as justice requires" power of the court applies when the court is sitting in equity as it is here. As the court said in Van Dyke, 286 A 2d at 709:

> "In exercise of its appellate juristiction a reviewing court has the power and indeed the duty to make such ultimate dispositions of a case as justice requires."

The same analysis as above would lead one to conclude that this is an instance where justice requires the joinder of these defendants at this stage.

In the Mount Laurel II case itself the court gives some reasons for including the four defendants. First it stated that the determination of regional need which will be done at the stage of litigation which we are now at is presumptively valid as to all the municipalities in that region. This would obviously include the four nonappealing parties.

ML II, at 439. Footnote 23 on the same page states that this presumption shall not apply to any of the six cases before it or any case where trial has commenced. Apparently this does not include the four defendants because they are neither part of the six cases then before the court nor involved in Mount Laurel litigation at present. The court goes on to announce the policy on joinder of municipalities not named as parties in further Mount Laurel litigation:

> Given the importance of these determinations, municipalities not named as parties may attempt to intervene or the court may require their joinder if, all things considered, it is thought advisable that such a municipality be bound by the determination even though such joinder may complicate the litigation.
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> ML II, at 439.

The fact that Judge Furman's initial decision was a remedial holding (ML II, at 489) could be used to argue that the housing allocation announced there was only a temporary court requirement open to further court action, though this interpretation is questionable since only final judgements are appealable and this judgement was appealed it must have been final.

The court in Mount Laurel II has stated that there is a six year period in which a town's judgement of compliance is considered final for the pruposes of res judicata, despite any changes in the interim. ML II, at 459. This would bar our joinder of the four defendants in question except for the fact that they did not receive a judgement of compliance, even by Judge Furman.

The strongest arguement we probably have is that the conditions mentioned above in the exception to the general rule of res judicata are applicable here. We would argue that the cases are not severable (atleast at this stage in the litigation) and are so intermingled and interdependant (the four defendants will be partof the region determination and will operate under the same fair share formula) that the relief or requirement placed on some of the parties effect the relief or requirements of others.