

UL v. Carteret

9/18

(1984)

Transcript of Proceedings

18 pgs

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SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY: CHANCERY DIVISION
DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER :
NEW BRUNSWICK, et al, :

Plaintiffs, : Civil Action

vs. :

TRANSCRIPT OF PROCEEDINGS

BOROUGH OF CARTERET, et al, :

Defendants. :

Toms River, New Jersey
September 18, 1984

B E F O R E :

HONORABLE EUGENE D. SERPENTELLI, J.S.C.

A P P E A R A N C E S :

WARREN, GOLDBERG & BERMAN, ESQS.
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Attorneys for Urban League

CLAPP & EISENBERG, ESQS.
BY: FREDERIC S. KESSLER, ESQ.
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Attorney for Township of Monroe

WILLIAM TIPPER
President, Monroe Township Council

MICHAEL LIEBOWITZ
Monroe Township Councilman

CAROLINE WOLGAST, CSR
Official Court Reporter

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THE COURT: So the record might be clear, on July 27, 1984 this Court issued a letter opinion that fixed the fair share of low and moderate homes for Monroe Township in order to satisfy its Mount Laurel obligation, and based upon the Township's admission that its ordinances did not comply with Mount Laurel, the Court also directed that the Township revise its ordinances within ninety days.

Miss Carla Lerman was appointed as a master to assist the Township in its efforts.

Now, on Thursday, September 13 I had a conversation with Mr. Farino, Township Counsel, that the governing body has decided that it will not engage in any ordinance revision and therefore not comply with the Court's order.

Mr. Farino, does that accurately state where we are at?

MR. FARINO: May it please the Court, good morning, Your Honor.

THE COURT: Good morning.

MR. FARINO: Yes, it does.

THE COURT: All right.

And as a result of that, I advised Mr. Farino that I would like him to appear before

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1 the Court today for the purpose of determining
2 how the matter should proceed, and I also
3 notified all counsel, if not, belatedly to
4 Mr. Kessler's office, for which I apologize.
5 I confirmed that request by letter dated
6 September 14, 1984 and in that letter I also
7 invited, but did not order that the mayor or
8 other members of the governing body attend this
9 hearing if they wished to do so.

10 Now, before I proceed, does counsel for
11 the plaintiffs wish to be heard?

12 MR. BISGAIER: No, Your Honor. I would
13 just like the record to reflect that I did submit
14 a letter request regarding relief in this matter
15 and that letter continues as to my position on
16 behalf of my client.

17 MISS WILLIAMS: I would just like to add
18 that that letter also reflects the position at
19 this point of the Urban League and we have
20 nothing further to add at this point.

21 THE COURT: Mr. Kessler?

22 MR. KESSLER: No, Your Honor.

23 THE COURT: Mr. Hutt?

24 MR. HUTT: No, Your Honor.

25 THE COURT: Mr. Farino?

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MR. FARINO: Just briefly, Your Honor, I would like the record to reflect that the Township of Monroe, in response to Your Honor's request, does appear this morning. In the presence of Your Honor, representing the Township of Monroe, are William Tipper, President of the Monroe Township Council, and Michael Liebowitz, who is a member of the five-man governing body in the Township of Monroe.

Just briefly, Your Honor, to summarize the position of the Township of Monroe as a defendant in this matter, as I know it as of this morning, following Your Honor's letter opinion dated July 27, 1984, the mayor and governing body of Monroe Township did engage in substantial deliberation regarding the content of that letter opinion and the various courses of action available to the Township. The chief executive of Monroe Township, Mayor Peter P. Garibaldi, took the strong position that he would not endorse any effort at a rezoning in the Township of Monroe aimed at producing a compliant zoning ordinance.

There was additional deliberations by the governing body subsequent to the mayor's early

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position and as late as last Wednesday, the governing body, by official action in the form of a resolution, unanimously endorsed the position of the mayor in seeking to adopt the position of essentially inaction and not embark upon a rezoning process.

THE COURT: Fine.

Let me say first I want the record to be clear that whatever the Court is about to say should not in any way reflect adversely upon counsel for Monroe Township. I know that both directly and indirectly through my conversation with Mr. Farino and the representations made to the Court by plaintiff's counsel, Mr. Farino has acted in every respect professionally appropriately. He has advised me of the general outlines of his advice to the governing body and I believe that he has performed his task as an officer of the court as well as counsel for the defendants in an entirely appropriate manner.

Secondly, let me say that I'm grateful that Mr. Tipper and Mr. Liebowitz are present. I had several reasons for requesting the attendance of the mayor and members of the governing body: First I wanted to be sure that

1 they fully understood the order of the Court,
2 its scope, the authority under which it is issued
3 and the obligation of the Court to insure its
4 order and to enforce its order;

5 Secondly, I wanted to reiterate the
6 consequences which may flow from the decision
7 not to revise the ordinance;

8 And third, and most importantly, I hope
9 that having had the opportunity to talk personally
10 to representatives of the Township, that a
11 better understanding of this Court's function
12 and the consequences of noncompliance, as
13 compared to revising the ordinance under protest,
14 would result and that Monroe's elected officials
15 would reconsider their decision based upon what
16 I perceive to be a real fact that the refusal
17 to comply could result in circumstances even
18 less satisfactory to the residents of Monroe
19 Township than would a revision under protest.

20 Now, first let me address myself to the
21 Court's order. As noted already, the Court's
22 order requires revision of the land use
23 regulations in the town within ninety days so
24 that those regulations will comply with Mount
25 Laurel II. This is necessary because Monroe has

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stipulated, has admitted for the record that its ordinances do not comply and it is necessary because the Court has found that Monroe has a fair share obligation to provide low and moderate housing.

Now, Mount Laurel is the judiciary's response to unconstitutional zoning and it has always been the province of the Courts to interpret the law and to determine its constitutionality. Generally, it is the province of the Legislature to write the law and the executive to implement it. Our courts have explicitly recognized that in this sense of the law, there are powerful reasons to leave the matters involved in these cases to the Legislature and to the executive branch of government, but our Supreme Court has also recognized that if there is a failure to act in those branches of government and constitutional rights are thereby impinged, then the Court must enforce the constitution.

Our Supreme Court has reiterated its position in the closing pages of the Mount Laurel opinion and I'd like to quote from page 352. The court says, "while we have always preferred

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1 legislative to judicial action in this field,
2 we shall continue, until the Legislature acts,
3 to do our best to uphold the constitutional
4 obligation that underlies the Mount Laurel
5 doctrine. That is our duty. We may not build
6 houses, but we do enforce the constitution."

7 Now, as a trial judge, I am duty bound
8 to obey the Supreme Court's directives and to
9 enforce them and all public officials who take
10 an oath to abide by the constitution of this
11 state are equally bound. We all have a right
12 to disagree with Mount Laurel and you have a
13 right to petition the Legislature for appropriate
14 redress, but your remedy in the interim does
15 not include the option to refuse to comply with
16 the constitution that you have sworn to uphold.

17 Now, what are the consequences of
18 continuing on the course which has been presently
19 determined in Monroe? I'd like to make them
20 clear. I believe Mr. Farino has done that
21 already, but I want it to be certain, as a
22 matter of public record, exactly what may flow
23 from what Monroe has now decided to do.

24 Some of the powers given to me are
25 expressly set forth in the Mount Laurel II opinion

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at pages 285 and 286, but I want to note parenthetically that those listed powers are not intended to be exclusive. A court always has the inherent power to shape the remedy to meet the wrong and the scope of remedies in dealing with constitutional violations are only limited by reasonableness.

Now, the court in Mount Laurel II addresses itself to the remedies for noncompliance and lists four of them. I'd like to go over them and perhaps discuss in layman's terms some of the potential scope of those four remedies.

First the court says that the trial court may order the municipality to adopt such ordinances and resolutions as will enable it to meet its Mount Laurel obligation.

I am not reading this verbatim, but that's a capsulization of what the court says. Now, what does that mean? This could involve the Court appointing experts to draw resolutions or ordinances. The experts could select the Mount Laurel sites they deem appropriate, subject to court review, and the Court could implement the ordinances by court order if the governing body refuses to adopt the ordinances.

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Next the court says that the Court may order that certain types of projects or construction be delayed until the ordinances are revised or until part of the fair share is constructed, in whole or in part, or firm commitments are made to build it. Now, this would include or could include the enjoining of the granting of any variances, any site plan approvals, any subdivisions, any sewer and water connections, any reservation of water or sewer capacity or, in fact, the issuance of any new building permits in the township.

Third, the Supreme Court says that the trial court could declare the land use regulations of the township to be null and void in whole or in part so as to relax or eliminate building and use restrictions in all or selected portions of the township.

What does that mean? That means that the trial court could, if it so ordered, direct that the building in Monroe Township would be unrestricted; that anyone could build anything where they wanted to, or alternatively, the Court could modify the existing building restrictions in the town so as to permit construction

1 at much greater densities or with much fewer
2 construction limits or follow whatever course
3 the Court deems reasonable to accomplish the
4 goals of Mount Laurel.

5 Fourthly, the Court may order that
6 particular applications to construct lower
7 income housing be approved. This would mean
8 that the Court would bypass all municipal
9 reviews, give approval to those applications
10 the Court deemed appropriate and direct that
11 building permits be issued.

12 I want it to be clear that presently
13 Mount Laurel construction, like any other
14 building, is subject to local review; it is
15 subject to the applicable site plan ordinances,
16 subdivision ordinances and any other land use
17 regulations that exist in the town. So the
18 mere fact that one is granted the right to
19 build, granted a builder's remedy and the right
20 to build some low and moderate housing, doesn't
21 mean that the land use regulations become
22 inoperative.

23 Monroe Township would still have the
24 right to review the manner in which they were
25 going to be built and to assure, within the limits

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of Mount Laurel, that they comply with the ordinances of the community. By refusing to revise its ordinance, Monroe abdicates that option.

Now, finally I'd like to address myself to why I think it is in the best interest of this Township to reconsider the action it's taken. It has to be conceded that the options that I have discussed, and others I haven't discussed but will consider, could have a very significant impact on Monroe well beyond that which the Court has already ordered. The direction that Monroe rezone or amend its zoning ordinance will not in and of itself result in the construction of a single house in Monroe. Such a rezoning under Mount Laurel II does not prejudice the town's right to appeal the Court's order and no construction will take place until all avenues of appeal are exhausted and then only if this Court's order is sustained.

And by that I mean, in simple language, it may be that an appellate court will disagree with the conclusions that I have reached, will find that I have erred in one way or another and that Monroe's fair share would have to be

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1 modified.

2 Furthermore, in the interim, any
3 municipality who revises its zoning ordinance
4 under protest, and any revision is deemed
5 automatically to be under protest if an appeal
6 is to follow, in the interim that municipality
7 may pursue every other avenue of relief that
8 it deems appropriate, and I have specific
9 reference to pursuing the political process and
10 to encouraging the political process to work.

11 I emphasize again that our Supreme Court
12 has hoped fondly in its opinion that those who
13 should be doing this job would do it and it would
14 please this Court and the Supreme Court to have
15 that happen. It has not happened, but in the
16 process of the passage of time Monroe has it
17 within its capacity, along with any other
18 municipality who feels offended with the Monroe
19 dictates, to pursue that process and to see
20 that legislative inaction becomes action, that
21 a consensus occurs and that the fair share of
22 all the municipalities of the state is pursued
23 in that arena.

24 Now, through Mr. Farino, I request that
25 the elected officials reconsider their action.

1 Mr. Farino, I charge you to urge them to weigh
2 the consequences of inaction against what I'll
3 be compelled to do if they do not act.

4 Finally, aside from the fact that they
5 are sworn to uphold the law, I suggest that you
6 have them consider whether they will be able
7 to convince an informed constituency in Monroe
8 that it was the Court and not they who brought
9 the drastic consequences upon themselves which
10 they will force this Court to resort to if they
11 continue with their present course.

12 At this posture, within the limits of
13 this Court's order, which is subject to appeal,
14 Monroe Township still controls its destiny and
15 I ask is it responsible for elected officials
16 to relinquish to a court that destiny at a time
17 when the rights of its citizens are fully
18 protected and any action taken in compliance
19 with the court order is without prejudice?

20 I will give the governing body a period
21 of eight days to reconsider its position. I
22 ask that Mr. Farino appear and all counsel for
23 the plaintiffs appear as well on Wednesday,
24 September 26 at 9:00 a.m., if that time is
25 convenient, and if not, we will arrange a

1 convenient time to advise me of the Township's
2 intention.

3 Now, in an effort to be absolutely clear
4 about what this Court has said and what it has
5 not said what the law requires and what
6 protection the law provides to Monroe Township,
7 I am requesting the court reporter to provide
8 an expedited transcript of my comments so that
9 they may be provided to Mr. Farino particularly
10 and, of course, to all counsel. I authorize
11 Mr. Farino to freely distribute to all members
12 of the governing body -- and I know that you
13 have a Faulkner Act form of government there
14 and I included that governing body -- the
15 mayor as well, of course, and to the press, to
16 the interested residents of Monroe Township and
17 to anyone else the comments of this Court. I
18 think that it is unfortunate that the newspapers,
19 none of whom are present today, will report
20 on what I have said without having heard it
21 firsthand. I think it is imperative that everyone
22 understand that this Court has no desire at
23 all to assert any power beyond that which is
24 absolutely required by the constitution and by
25 the dictates of Mount Laurel II. The Court has

1 no desire to be characterized in a manner it
2 has been characterized, but it is ready to do
3 what it has to do if the constitution is not
4 complied with.

5 Now, I am grateful that two members of
6 the governing body have attended. I want to
7 make it clear that I never intended this session
8 to be a meeting of the governing body. I
9 invited them so that they could hear me say
10 what I did say. I fully recognize their right
11 to disagree with Mount Laurel. I'm not offended
12 by it. There may be intellectual differences.
13 I indeed have the right to disagree with Mount
14 Laurel, too. However, as a judge who is sworn
15 to uphold the law of this land, my right to
16 disagree does not extend to a privilege to
17 disregard it.

18 I would invite either member of your
19 governing body, if they wish, to address the
20 Court, and they shouldn't feel they have to.
21 If they have any comments to make, I would be
22 pleased to hear them.

23 Mr. Tipper.

24 MR. TIPPER: First, Your Honor, I would
25 like to thank you very much for your very concise

1 definitions.

2 I can also assure the Court that, as you
3 said, Mr. Farino has continuously apprised the
4 Council of our options and consequences of our
5 action and we have been fully aware of them,
6 but points have been clarified.

7 There is no way at this time that I can
8 speak for the Council because we have not had
9 an opportunity to meet. Most assuredly, you
10 have requested us to reconsider. The Council
11 will be polled in compliance with your request.

12 Thank you, Your Honor.

13 THE COURT: Fine. Thank you.

14 We will stand in recess then until
15 Wednesday, September 26. If between now and
16 then counsel for the plaintiffs wish to submit
17 proposed recommendations to the Court concerning
18 action which should be taken in the event that
19 the Township does not revise its ordinances,
20 they may do so, of course with copies to
21 Mr. Farino, and Mr. Farino may respond.

22 I, in the interim, will take no action
23 with respect to the matter pending the hearing
24 on that date.

25 All right. I thank you for coming. I know

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it is an inconvenience both in terms of the trip and your daily schedule, but I do appreciate your being present.

MR. FARINO: Thank you, Your Honor.

THE COURT: Thank you.

* * * *

C E R T I F I C A T E

I, CAROLINE WOLGAST, a Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes.

Caroline Wolgast
CAROLINE WOLGAST, CSR
LICENSE NO. XI00316

DATED: September 18, 1984

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