UL. v. Carteret, Cranbury 4/19 1985

- Internal memo re: motions in opposition to Cranbury brief and cases on jurisdictional point.

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Notes: ~~RULS-UL-Cran 1985-380~~

~~RULS-UL-Cran 1985-270~~

CA000~~308~~309Z

TO: John Payne

CA000309Z [redacted]

FROM: Valarie A. Jones

RE: Motions(Toll Brothers, Garfield, Cra[illegible]
in Opposition to Cranbury Township's Motion To Stay

DATE: April 19, 1985

Toll Brothers asserted that once the legislation, if any, is signed into law, subsequent motions would then be appropriate. At this point it is premature to gauge what impact, if any, the legislation will have on Mt. Laurel litigation. He raises the argument that the builder's remedy is being assailed for causing other areas throughout the state to lose private investment. If so, that assertion should be supported by factual data. Before the court can determine the impact of the SDGP or the builder's remedy, the court should have a full record before evaluating Cranbury township's claims.

The language in the Cranbury Land Company brief is strong, almost to the point of being caustic. He attempts to depict Cranbury as an exclusionary municipality, primarily interested in furthering a "selective type of growth" to the extent of discriminating against the poor.

The Zirinsky brief asserts that since arguments regarding the SDGP have been fully developed and litigated, it need not be raised again. Although Zirinsky has been criticized for not having a specific development plan, such a detailed plan has been submitted with Zirinsky awaiting a response from the township. For its argument establishing the contention that the court lacks original jurisdiction, Zirinsky releys on In Re Livolsi, 85 N.J. 576 (1981) which states that the Supreme Court is primarily an appellate body. But to the

extent that the court does have authority in specific circumstances to invoke original jurisdiction, petitioners appear to confuse the court's rule making authority with its authority to make substantive constitutional decisions. Cranbury's attempt to use the rule making powers to overthrow substantive constitutional decisions must be recognized as a totally unwarranted ground for the procedural rulemaking jurisdiction of the court.

The Garfield brief asserts that Cranbury is merely using another delay tactic to preclude implementation of the Mt. Laurel obligation. Although they have stated through their compliance plan that the Garfield site is the preferred location, the township now attempts to assert that Garfield's site is unsound, the fair share allocation is unreasonable,and the construction of 816 low and moderate income units would be burdensome. To the extent that Cranbury states that it is acting in good faith, the conduct of Cranbury does not give credence to that assertion.

Contrary to Cranbury's position, a remedy does exist. Cranbury has the right to try its case and may appeal if it receives an unfavorable decision. Thus, an argument invoking original jurisdiction based upon this premise is unsound.

Cranbury seeks to base its motion for a stay upon legislation that may or may not be approved. At this point its constitutionality is uncertain. Therefore, this stay is perceived as another ploy to delay the Mt. Laurel obligation and it should be rejected.

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4/9/85

TO: Cranbury team

FROM: Eric Neisser

RE: Cranbury matter in S. Ct.

John and I have discussed the matter and, despite our essentially vindictive instincts, have decided that it would be best not to file an attorneys' fee motion in the Supreme Court. We are virtually certain that the Court would deny the motion, so that it does not look biased or punitive if the matter ever goes to federal court and we fear that the other side would make a publicity point out of the denial, when in fact lawyers know it means next to nothing given the high standard of establishing frivolity on an appeal.

At this point it appears unnecessary to have a team meeting this Friday, as Caton's report is not yet in. I would ask each of you, however, during the next week to review carefully the filings in the Supreme Court by Bisgaier, Warren, Herbert and Toll Brothers, copies of which I am leaving with Elizabeth, to see if there is anything in their submissions that would be relevant to the remaining compliance process in the Cranbury proceedings in the trial court. Please just write up a short memo indicating what you think might be helpful, harmful or just generally interesting for future proceedings.

Once again, our profound thanks to each of you for your hard work and enthusiastic assistance. We are sorry that the short time frame made it impossible for us to have you write the papers yourselves or at least give us substantial editing input. We hope, however, that in reviewing the matter, you still find that the process was educational, or at least interesting.

cc: Prof. Payne

TO: Constitutional Litigation Team-Cranbury

FROM: Valarie A. Jones

RE: Cases involving jurisdictional point in Cranbury's Brief

DATE: April 2, 1985

Marlboro Township v. Freehold Regional High School District, 195 N.J. Super. 245 (App. Div. 1984)

The school district built a speed bump in order to enforce very slow vehicular movement as a matter of safety. The construction of the speed bump was a violation of township ordinance which prohibited the erection and maintenance of speed bumps. Appeal was taken from an order of the Superior Court and the court held that school board had violated the township ordinance. And in an exercise of the court's original jurisdiction, R. 2:10-5, the reinstatement of the conviction included a suspension of the fine imposed because the court believed that the fine would be contrary to the public interest and essentially unfair.

Kelley v. Curtiss, 16 N.J. 265 (1954)

Plaintiffs, husband and wife, sought damages for injuries sustained when a horse assigned to police officer kicked plaintiff, Mrs. Kelley, as she walked away after feeding the horse.. The court asserted that we shall decide the case on an issue that was not advanced by the city's petition for certification.

State Dept. of Environ. Protect. v. Ventron, 182 N.J. Super. 210 (App. Div. 1981), aff'd, 94 N.J. 473 (1983)

Interlocutory appeals and cross-appeals were brought from judgments in an action by the DEP against corporations for the cleanup and removal of mercury pollution in Bergen County. The court exercised original jurisdiction to reach a factual finding,

in view of the overwhelming evidence of mercury pollution in Berry's Creek and its substantial and imminent threat to the environment, to marine life and to human health and safety. The case was remanded to the trial court and the court did not retain jurisdiction.

DiPietro v. DiPierto, 193 N.J. Super. 533 (App. Div. 1984)

Where there has been a manifest error not open to controversy, the court may properly assume original jurisdiction. "We assume original jurisdiction, R. 2:10-5, to conclude that equitable considerations require correction of this judgment." The case involved a divorce settlement in which the wife's interest in the husband's pension rights was improperly calculated.

Estate of Cosman, 193 N.J. Super. 664 (App. Div. 1984)

The court pursuant to R. 2:10-5 elected to exercise original jurisdiction. Carmen Cosman and John Herbison lived together for 22 years and both executed wills leaving property to each other's children. When Herbison predeceased Cosman, she changed her will eliminating from her will the children of Herbison. Five Herbison children filed a complaint and were successful in the trial court. However, on appeal the judgment was vacated and complaint was dismissed.

In Re No. Jersey Dist. Water Supply Comm'n, 175 N.J. Super. 167 (App. Div. 1980)

This case involved an appeal from decisions of the Commissioner of the Department of Environmental Protection and the Water Policy and Supply Council. With regard to jurisdiction the court asserted that provisions in the New Jersey Constitution (Art. VI, V, par. 3) give this court original jurisdiction which it may exercise when appropriate. The court elected to hear the case because it felt that

the project was a major public concern. "We deem it our obligation in the public interest that we pass upon those legal issues involved by exercising our original jurisdiction." Thus, the court denied the motion for partial stay of these proceedings...and proceeded to the determination of the legal issues involved.

State v. Lawn King, Inc., 169 N.J. Super. 346 (App. Div. 1979), aff'd, 84 N.J. 179 (1980)

Defendants appeal from their convictions under ...counts of an indictment charging multiple violations of the New Jersey Antitrust Act. This decision was brought to the court's attention in defendants' motion for post-trial relief. And as an appellate court, the court is obliged to apply the law as it exists when the decision is rendered. The convictions were reversed. The case was certified to the Supreme Court; the Court asserted that the Appellate Division correctly directed entry of judgment of acquittal.

Conclusion

These cases do not present a strong argument for original jurisdiction. In most instances it is simply stated that the court has original jurisdiction. Arguably, these cases do illustrate that the court's jurisdictional authority is quite expansive. Original jurisdiction allows the court to alter the lower court's order to prevent manifest error, to decide a case on a issue that was not raised by the prior court, to reach a factual finding, and where appropriate, to exercise its judicial authority in the public interest.