

U.L. v. Carter - generally 12/23/1976

● Petition For Cert. To Superior Ct, App. Div.

Pgs. ~~14~~ 14

PI # 1097

● CA 001100M

SUPREME COURT OF NEW JERSEY

DOCKET NO. _____ TERM 76

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, et al.,

Plaintiffs-Petitioner

v.

THE MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET, et al.

Defendants-Respondent

:

:

:

:

:

:

Civil Action

Sat below:

Matthews, R.

Seidman, B.

Horn, H.

PETITION FOR CERTIFICATION TO
THE SUPERIOR COURT, APPELLATE DIVISION

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STATEMENT OF THE QUESTION INVOLVED

On July 9, 1976, the Chancery Division of the Superior Court entered its judgment against 22 Middlesex County municipalities in a suit challenging their exclusionary zoning practices. After eight of the defendants appealed, the plaintiffs cross-appealed against them and appealed against the other 14 defendants. Upon motion of five of these defendants, the Appellate Division dismissed the appeals, giving the plaintiffs the right to seek further relief in the trial court.

The question presented for certification is whether the Appellate Division properly dismissed the appeals against five defendants while allowing the appeals to proceed against the other 17 defendants.

Supreme Court of New Jersey

Docket No. _____ Term 1976

URBAN LEAGUE OF GREATER NEW :
BRUNSWICK, et al., :
: :
Plaintiffs-Petitioner: Civil Action :
: :
v. : :
: : : Petition for Certification to
THE MAYOR AND COUNCIL OF THE : : the Superior Court, Appellate
BOROUGH OF CARTERET, et al. : : Division :
: : :
Defendants-Respondent: Sat below: :
: : : Matthews, J.
: : : Seidman, J.
: : : Horn, J.

To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of New Jersey:

Plaintiffs, the Urban League of Greater New Brunswick
and four individuals in need of housing, respectfully show:

STATEMENT OF THE CASE

1. On July 23, 1974, the plaintiffs, representing low
and moderate income persons, brought suit against 23 of the
25 municipalities in Middlesex County. The complaint alleged
that the defendants had, through various land use practices,
effectively excluded low and moderate income persons, both
white and non-white, from residing within their communities.
Because New Brunswick and Perth Amboy did not pursue such
practices -- and indeed, had more than their fair share of low
and moderate income residents -- they were not named as
defendants initially but were later sued by the original

defendants in a third party complaint.

2. During February and March, 1976, Judge David D. Furman conducted the trial on the merits. In the course of the trial, the judge indicated that he would grant "conditional dismissals" to 11 of the defendants ^{1/} if they revised their zoning ordinances so as not to exclude housing for low and moderate income persons. The court asked the parties, in each instance, to agree on what changes should be made. At the conclusion of such discussions, the court accepted the agreement and the plaintiffs reserved their right to request additional "affirmative relief" at the end of the trial.

3. On May 4, 1976, the court filed its opinion. The judge granted dismissals to 11 towns conditional upon their adoption of the zoning amendments agreed to by the plaintiffs. The court denied the plaintiffs' request for "affirmative" relief as to these 11 defendants.

4. With respect to 11 other defendants, ^{2/} the trial court held that their zoning practices violated the standards announced by this Court in Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151 (1975). In addition to requiring these 11 defendants to alter their offensive practices, the judge ordered them to take additional "affirmative" steps to facilitate the location of low and moderate income housing within their borders. Regarding the twenty-third defendant

1/

Carteret, Helmetta, Highland Park, Jamesburg, Metuchen, Middlesex, Milltown, South Amboy, South River, Spotswood, and Woodbridge.

2/

Cranbury, East Brunswick, Edison, Monroe, North Brunswick, Old Bridge, Piscataway, Plainsboro, Sayreville, South Brunswick, and South Plainfield.

Dunellen, the court dismissed the complaint finding no violation of the Mt. Laurel principles. It also dismissed the third party complaints against New Brunswick and Perth Amboy.

5. On May 12, 1976, the plaintiffs moved to modify the May 4 decision. We asked the court once again to order the 11 conditionally dismissed defendants to take affirmative steps, in addition to revising their zoning ordinances, to encourage the provision of housing for low and moderate income persons. Regarding the other 11 defendants, the plaintiffs asked the court to order additional affirmative relief because, in our judgment, the affirmative relief included in the May 4 decision was insufficient to vindicate the plaintiffs' constitutional rights. On May 28, 1976, the trial court denied the plaintiffs' post-trial motions for additional relief.

6. On July 9, 1976, Judge Furman entered judgment against the 22 defendants, tracking his rulings of May 4 and May 28.

7. In late August, eight defendants noticed timely appeals ^{3/} from the judgment of July 9. On September 2, the plaintiffs filed cross-appeals against these eight defendants and noticed appeals against the remaining 14 defendants. No appeal was taken against Dunellen.

3/

Cranbury, East Brunswick, Plainsboro, South Plainfield, Monroe, Piscataway, Sayreville, and South Brunswick.

8. On September 24, 1976, the eight appealing defendants moved before Judge Furman for a stay of his July 9 judgment. On September 28, that motion was formally denied. On September 30, they renewed the stay motion in the Appellate Division, which granted it on November 29, 1976. ^{4/}

9. Five other defendants ^{5/} also moved to dismiss the appeals on the principal ground that the plaintiffs had "consented" to the disposition of the cases against them, the so-called "conditional dismissals". The plaintiffs responded that the "consent" extended only to the kind of revisions to be made in the defendants' zoning ordinance and was not intended to preclude any request for further relief at the conclusion of the case.

10. By orders filed on November 29, the Appellate Division granted the motion to dismiss the appeals against these five defendants. (see attachments) On the pro forma orders, the court made the following notations:

This dismissal is without prejudice to the right of plaintiffs to apply to the trial court for such additional relief as may be appropriate to carry out the terms, both in letter and in spirit, of the settlement reached by the parties hereto.

11. The effect of the dismissal orders was to divide the case into two parts, requiring the plaintiffs to litigate simultaneously in the Chancery Division and the Appellate Division.

^{4/} No stay is presently in effect for the other 14 defendants.

^{5/} Helmetta, Highland Park, Middlesex, Milltown, and Woodbridge.

12. The question presented for certification is whether the Appellate Division properly dismissed the appeals against five defendants, while the other appeals remain pending. 6/

ARGUMENT

The plaintiffs contend that the order dismissing the appeals against five defendants improperly divides the case so that plaintiffs must now litigate in two forums. But more important, the Appellate Division, in remanding the action to the Chancery Division for further proceedings, is requiring the plaintiffs to perform a futile act. The notation on the order of the Appellate Division authorizes the plaintiffs to seek further relief from the trial judge. But, as we pointed out above, the plaintiffs have already applied to the trial judge for such additional relief, which was denied.

Indeed, on two occasions, the plaintiffs requested the lower court to order the 22 defendants to take appropriate and reasonable affirmative steps to correct the continuing effects of their past exclusionary practices. At the conclusion of the trial, we sought that relief in our post-trial briefs. When it was granted only in part for 11 defendants and denied altogether for 11 others, we moved to amend the findings of the trial court. Thus it makes little sense to send the plaintiffs back to the trial court to request additional relief when that judge has already twice denied it.

6/

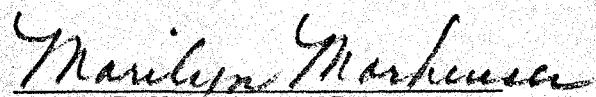
Since the order of dismissal, four other defendants (South Amboy, Carteret, Metuchen and South River) have moved to dismiss the appeals noticed against them.

Further, it is a waste of judicial resources and inefficient to require the plaintiffs to litigate simultaneously in two courts. This Court has frequently disapproved such bifurcation of legal disputes. "It must be noted, however, that we do not approve of piecemeal adjudication of controversies." Hudson v. Hudson, 36 N.J. 549, 552-53 (1962). The dismissal order of the Appellate Division would have precisely the impact of converting this case from a single action to "piecemeal" litigation. This Court has for many years required that appeals be taken only from "final" judgments to avoid the piecemeal approach now effected by the order of the Appellate Division dismissing the appeals. See Petersen v. Falzarano, 6 N.J. 447 (1951). Just as this Court has applied the "final judgment" rule very strictly, it should be equally firm with lower court orders which effectively divide a case into parts.

CONCLUSION

For the reasons set forth above, the plaintiffs respectfully request this Court to grant certification to review the order of the Appellate Division dismissing the appeals against five defendants. In the alternative, the plaintiffs suggest to the Court that, on its own motion, it certify for appeal the entire case now pending in the Appellate Division and bring it here for immediate review.

Respectfully submitted,


MARILYN MORHEUSER
Attorney for Plaintiffs

Dated: December 23, 1976

CERTIFICATION

I hereby certify that the foregoing petition presents a substantial question meriting certification, and that it is filed in good faith and not for purposes of delay.

Marilyn Morheuser
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Counsel for Plaintiff-Petitioner

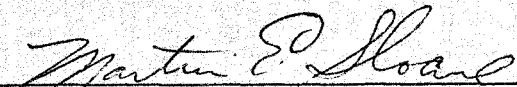
Dated: December 23, 1976

CERTIFICATE OF SERVICE

I hereby certify that service of this Petition for Certification to the Superior Court, Appellate Division and appendix was made by mailing the original and nine copies to the Clerk of the Supreme Court of New Jersey, and two copies of the Petition only to counsel for the defendants listed below: (the appendix consisting of the orders of the Appellate Division dismissing the appeal, the opinion, the judgment, the Brief in Opposition to Defendants' Motion for a Stay Pending Appeal, excerpts from the May 28 transcript of motions denying amendment of the Court's findings, the May 12 Memorandum to amend the Court's findings has been forwarded to all counsel at an earlier time).

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