[redacted] - LA: L. v. Carteret

Edison 2-Jun-1977

Defendant's (Twsp. of Edison) Brief in Opposition to Plaintiff's Motion ^^ Vacate Trial Courts' Order of Jan. 13, 1977

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-33-76, A-4685-75

URBAN LEAGUE OF GREATER NEW BRUNSWICK, et al.,	)	
Plaintiffs-Appellants,	)	Civil Action
vs.	)	
THE MAYOR AND COUNCIL OF THE BOROUGH OF CARTERET, et al.,	)	
Defendants-Respondents.	)	

DEFENDANT'S (TOWNSHIP OF EDISON) BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO VACATE TRIAL COURT'S ORDER OF JANUARY 13, 1977

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STATEMENT OF FACTS

Edison Township does not disagree with the statements contained in plaintiffs' brief in the segment entitled "Introduction"; but, the statement doesn't go nearly far enough.

The following recital will be more than amply borne out by the transcripts attached to plaintiffs' brief.

On the first day of trial, Edison Township applied for, and received, permission from the trial court to participate in the trial on a limited basis. The argument advanced by us, which was well received by the trial court, was that Edison had no disagreement with the legal philosophy and the social pragmatism that it is essentially wrong for a municipality to exclude low and moderate income families from living within its boundaries by unfair zoning practices. Stated affirmatively, Edison not only believed that it was necessary to provide for low and moderate income groups, but, it had effectively done so seven or eight years before the plaintiffs came along with its unwarranted suit.

Edison's Master Plan, which predated its most recent zoning ordinance by four years, contemplated this problem and made more than ample provision for it. We knew, at the onset of the trial, that Edison would be in full compliance with any reasonable standard or formula laid down by the Court. Edison was so certain of this that its only participation in the trial was to come for;vard with affirmative proofs on

these provisions which are contained in its present zoning ordinance.

It is exceedingly sad and unfortunate that none of the plaintiffs' proofs in any way attempted to offer a standard or formula, and worse, plaintiffs did absolutely **nothing** (despite their burden of proof) to do anything in the record that would question or diminish Edison's affirmative **proofs.**

Unfortunately, until the trial Court's written decision there was no legal formula or test, that Edison could apply that would enable it to come to the Court by way of Summary Judgment, or, to present its case on numerology and thus demonstrate clearly that the plaintiffs' suit against Edison was grossly illadvised and unwarranted.

Ergo, when the written decision of the trial Court came down, we carefully took the words of the trial Court and applied them to our zoning ordinance. Lo and behold, we discovered that on the date of the decision we had roughly twice as many available units for low and moderate income families than the Court's decision mandated. By January 13, 1977, the date of the last Order, thousands more of these qualifying units were actually approved or being built.

The trial Court was unabashedly surprised when its formula was applied to Edison's zoning.

Stated another way, in its decision the trial Court required Edison to provide for 3,492 low and moderate income units by its zoning fownula. On the date the decision came down, Edison's zoning ordinance provided for 5,957

such units, or, an over abundance of 2,465- By January 13, 1977, again in accordance with the definition in the decision, (giving credit for approved applications or new starts), Edison had an additional 2,907 units. Still stated another x^ay, on January 13, 1977 Edison had 5,372 more units than-the trial court required.

The following are quotes from the transcripts attached to plaintiffs' Motion:

Transcript of September 24, 1976, page 7:

THE COURT "Now, I don't think that I foresaw this, and I don't know that the plaintiffs foresaw it, but Mr, Winter seems to have foreseen it during the course of the trial. But it seems to me a very serious argument that present zoning does provide the potential for this number of low and this number of moderate income units."

Page 10:

THE COURT: "I'm not sure that I foresaw the way that the judgment would be implemented, but it seems to me that this would be an effective way of doing it."

Page 26:

THE COURT: "I would like you to respond, Mr. Searing, and possibly you are not ready today and you would take some time, but, I think it is a serious contention on both sides. I can't say that I .foresaw it.

Now, deficiencies are pointed out in the

zoning ordinances of both Edison and Sayreville, but I think that you would tend to agree that those were the two of the eleven municipalities that were most marginally in the case, would that be fair to say."

MR. SEARING: "Well, I wish that Your Honor didn't ask me that."

Page 27:

THE COURT: "* * *This, of course, was not clear on the facts brought out at the trial. The existing zoning of their vacant land now provides the potential for the allocation to those respective municipalities."

Page 28:

THE COURT: "* * *As I say, it is not something that I foresaw. Mr. Winter and maybe Mr. Karcher did foresee it."

Transcript of January 13, 1977, page 2:

MR. WINTER: "* * *As Your Honor well knows, I acceded to a De minimis concept based upon the facts in this case and what we're seeking."

MISS MORHEUSER: "Your Honor, essentially Mr. Winter is correct."

Page 3:

THE COURT: "* * *The view of the Court was that--or, rather, a serious or substantial contention was made by Edison, that is, within its present zoning ordinance it would have the potential for this number of units and was not prepared to say that that was inaccurate or not a reasonable projection.

We have had the benefit of a review of the vacant

land by the County Planning Board, * * *."

Transcript of February 11, 1977, page 2:

THE COURT: "We worked it out carefully as to Edison, and I believe I will stand on that prior Order."

p - What happened between January 13, 1977 and February 11, 1977 was that the Middlesex County Planning Board reported to the trial court that Edison's contention that it had more than enough units under its present zoning was not only accurate; but, that Edison's computations (contained in our affidavits filed with the trial court) were conservatively low, and the Planning Board found that Edison would have been entitled to a significantly larger number of qualifying units. Moreover, by that time, a substantial number of those units had received approvals and were actually being built. By today, of course, that number is greatly magnified.

This Court must wonder why Edison leaned over so far backwards in permitting the Middlesex County Planning Board (who were not parties to or participants in this matter), to make an independent investigation of our affirmative proofs and why Edison settled for less than an outright judgment in its favor. The reason purely and simply is that Edison was and is far more interested in the substance rather than the form and just as importantly Edison wants to limit the cost of litigation in this grossly unwarranted law suit. See Exhibit "A".

We fervently believe that we have thus demonstrated that the result of the trial court's decision and judgment was "surprising"; and that th^ Order of January 13, 1977 is still interlocutory.

ARGUMENT

POINT ONE

R.R. 4:50-1.(a) provides in the most clear and concise terras that the trial court had the right to enter its Order of January 13, 1977. It is just as clear that the trial court had the right to do this within any reasonable time so long as it was within one year. See 4:50-2. Moreover, R.R. 4:50-3 does-not effect the finality of a Judgment or Order.

POINT TWO

As to the Township of Edison, the Order of January 13, 1977 is interlocutory in nature. The Trial Court made that abundantly clear. In the transcript of January 13, 1977, at page 40, the Court said:

> "I know that you were not here at the earlier argument and discussion in chambers, Miss Morheuser. The view of the Court was that -- or, rather, a serious or substantial contention was made by Edison; that is, within its present zoning ordinance it did have the potential for this number of units and was not prepared to say that that was inaccurate ©-r-not a reasonable projection.
>
> We have had the benefit of a review of the vacant land by the County Planning Board, and the matter seems to be somewhat hanging in balance as to whether there is or is not the potential under the present zoning ordinance. So,.my intention was to give an additional period of six months in

which Edison would not be found in violation of the Judgment. I tend to think that there will be a shakedown during the six months, and it will be apparent one way or the other at the conclusion of that period of time.

Now, I do mean that one, tivo and three would be in effect, and I think the Show Cause provision would he not on May 1st but, let's say, on June 1st."

It seems obvious to everyone but the plaintiff that the trial court retained jurisdiction as a gesture to the plaintiff, to give them still another opportunity to dispute,if they can, the affirmative proofs of Edison Township and the independent investigation of the Middlesex County Planning Board.

Please note that the Order under attack says in paragraph 4, "that either the plaintiff or the Township of Edison shall show cause on June 1, 1977, or earlier, upon proper notice and Motion before this Court, why the existing zoning ordinance of the Township of Edison should not be declared valid and in compliance with the purposes and intent of the court's decision of May 4, 1976".

(Edison did not move prior to June 1, 1977 because of this Motion pending in the Appellate Division, and, so notified the trial court).

R.R. 2:2-3 clearly restricts appeals as of right to those taken from Final Judgment or Orders.

Plaintiffs never made an application under R.R. 2:2-3.(b) or .under 2:2-4. Conseqentty, their appeal and this Motion

should be dismissed.

Respectfully submitted,

Roland A. Winter

ROLAND A. WINTER
Attorney for Defendant,
Township of Edison

HOUSING SUIT 3-16-77 HOME NEWS

Lawyers cost $245,949

By RON MISKOFF
Home News staff writer

^thiiading t&e list is Fenick's ^ o w borough of Cartexet with a ~^b(Si of S37,Se2. SayreviUe is nest - >31,C62, fbllow«J fay Mid- costifMHdlesex- County; conf^Other municipalities- and mom'Oesatleast 1^5,000 in \^?^elr;.legal costs are: gal and court ccsfefso far^??C/aijfam7v.515^3; Dmei!en, according Carteret Mayor John-- 3 East Brunswick,. Faricfc^*v;-,.^^^£ .^tl8,ffl6; Edison,V$Ujn; Hei- r. '• -3^S^^-^^.iife,4«ij.'«*.inetta'^:-53^56^*Jamesburg. Jn'a survey of all 25'county- |2,4?0;'Monrce.-$12,OCOr New mnnicipalitiesvFenickreported "Brunswick. SffiS,"O!d Bridge,; that just19 of *them bad* spent '$13,500: Piscataway, S3,70lr: $245,849 to fight thcsuit whicb^raInsboro, 512,0C0;- South - asked-the-courts to set-aaide^YBrnnswtck. 515,309; South-Riv— laws vfaatL Urban "League of •er,:-515U03pand Spots-wood,.? Greater "New Branswiclc cifl-'t?7,7Wr-r^^^v%'i'"--',:--T5-" cials said fostered exdasjonary^r^South Amboy received-k bill bousing:^^^';^};^;^;i^from'fe'attonierfor-.59,00O,'- [1] The-, resells-bf- Fenick's sar-•'Fenici wrote., bet *it* was- not. vey were released yesterday at. approved by the bcrcugir ccun- the agenda meeting of the ccun-vtcil! and is presently- being -< ty freeaoider board. Feaick. "argued out ia the courisi'-^ sent his results to the freehold- *- - •; - -. • '. •'- ers. *'j,r----x'*-.-. : •-• -A

. Essentially,-ihe Urban^ League had charged that 23 of -1 the county's 25 municipalities• had effectr/ely esduded the poor and near-poor from set- tling ©• thjeir^.comxnnnlties. • '

Supericr Court JtsJga David Fra-man ordersd some of the communities -to change their zoning laws ,last. year, while many .of. them.changed their zoning ordinances without the court directly ordering them to do so. Several municipalities are still fighting Forman's mi- ing in the Appellate Division of Superior Court'

Fenicfc's survey was made "to demonstrate the enormous waste of money;and human re- sources in "defending an infr- ingement on home raie," he wrote *in* an accompanying statement- "It is my opinion that *the* suit couid have been lumped as one single suit ratheF than 25 individual suits by 25 communities."

Noting that *ihs* figures *are* not final—some communities did not answer the survey letter and others noted rieir costs'are not finalised yet—Fenicfc added that the costs do not reflect money spent for court; judges, attendants and o!her amounts not paid by the communities.

CERTIFICATE OF SERVICE

I hereby certify that service of this Defendant, Township of Edison's Brief in Opposition to Plaintiffs' Motion to Vacate Trial Courts Order of January 13, 1977 was served by regular mail upon:

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Dated: June 2, 1977.