

Memorandum of law in support of
respondent's motion to dismiss

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SUPERIOR COURT OF NEW JERSEY
 Appellate Division

URBAN LEAGUE OF GREATER]
 NEW BRUNSWICK, et al.,]
 Plaintiffs-Respondents]
 v.]
]
 THE MAYOR AND COUNCIL]
 OF THE BOROUGH OF]
 CARTERET, et al.,]
 Defendants-Appellants]

Docket No. A-5394-84T1
 (Monroe Township)

MEMORANDUM OF LAW IN SUPPORT OF
 RESPONDENT'S MOTION TO DISMISS

It is well settled that a final judgment, to be appealable as of right, must be final as to all issues and all parties. As the court pointed out in Frantzen v. Howard, 132 N.J. Super. 226, 227-28 (App. Div. 1975), "piecemeal reviews, ordinarily are anathema to our practice, as expressed in the rules which require the final disposition of all issues at one hearing on the trial level followed by orderly appellate review. The interruption of the litigation at the trial level, by the taking, as here, of an unsanctioned appeal' disrupts the entire process and is wasteful of judicial resources."

The Order of the Court under appeal simply directs payment by Monroe Township of fees owed to the Court-appointed Master and the Township attorney and planning consultant. It is clearly not

a final judgment as to all issues relating to Monroe, not mention as to all parties.

Even if the order were somehow appealable as of right, the appeal must be dismissed for lack of jurisdiction because appellants failed to comply with R. 2:4-1 of the Rules Governing Appellate Practice, which provides in pertinent part:

- (a) Appeals from final judgments of courts
... shall be taken within 45 days of their entry.

Here, notice of appeal was filed 77 days from the entry of the Order. Thus, notice of appeal was filed beyond the time limit required for appeals from final judgments. No motion for extension of time to appeal under R. 2:4-4 was ever filed. Thus, the appeal must be dismissed for lack of timeliness.

The appeal fares no better under respondents' view that the Order is interlocutory. As such, it is barred for failure to comply with R. 2:5-6 of the Rules Governing Appellate Procedure. It is further barred by the express terms of the Supreme Court's decision in So. Burlington Cty. NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983).

R. 2:5-6 holds that application for leave to appeal from interlocutory orders shall be made by serving and filing with the court a notice of motion for leave to appeal within 15 days of the entry of such order. Appellant did not file such a motion. Rather, defendant filed a notice of appeal beyond all applicable time limits. Thus, the Court should dismiss the appeal, even if viewed as interlocutory, for failure to comply with the Rules.

Finally, this appeal is barred by the express holding of the Supreme Court in Mount Laurel II, in which the Court stated:

[t]he municipality may elect to revise its land use regulations and implement affirmative remedies under protest.' If so, it may file an appeal when the trial court enters final judgment of compliance. Until that time there shall be no right of appeal ... Proceedings as ordered herein (including the obligation of the municipality to revise its zoning ordinance with the assistance of the special master) will continue despite the pendency of any attempted interlocutory appeals by the municipality.

92 N.J. at 285 (emphasis added).

Monroe Township seeks to impede compliance with the dictates of Mount Laurel II by refusing to comply with the lawful orders of the court and by raising untimely and improper appeals. As the Court pointed out in Mount Laurel II, "confusion, expense and delay have been the primary enemies of constitutional compliance in this area. This problem needs the strong hand of the judge at trial as much as the clear word of the opinion on appeal." Id. at 292.

Plaintiff respectfully requests that this Court provide that clear word by dismissing this appeal.

Dated: October 21, 1985

Respectfully submitted,



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