

Chase v. Township of Jackson, Jackson <sup>Twp</sup> (1989)

Judicial Opinion

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6 pgs.

issue: the legality of the mobile home ordinances

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In this action in lieu of prerogative writs, plaintiffs Gregory and Judith Chasar and Robert and Cheryl O'Connor are residents who purchased mobile homes and entered into a lease in the Oak Tree Mobile Home Park situated in Jackson Township, New Jersey.

Oak Tree is<sup>a</sup> licensed senior citizen mobile home park under Chapter 77 of the Jackson Township Code, permitting within certain exceptions, occupancy to residents over 50 years of age.

In January 1976 the Chasars took occupancy in the park and in November 1976 the O'Connors took occupancy. Both the Chasars and the O'Connors violated the age restrictions of the ordinance in that they are both young couples under the age of 50 having children residing with them. The park owners obtained a judgment of possession against both the Chasars and the O'Connors on the basis that they failed to comply with the age restrictions of the ordinance. The defendant township in November 1978 investigated the violations and by resolution agreed to give plaintiffs a three year period in which to vacate the park. In August 1982 both plaintiffs received summonses for violating Chapter 77 of the Jackson Township Code for "underage occupancy of a mobile home in a senior mobile park". This action in lieu of prerogative writs was instituted by plaintiffs along with Joseph H. Rodriguez, Public Advocate of the State of New Jersey, challenging Chapter 77 to restrain enforcement of Chapter 77 as being violative of certain provisions of the State and Federal Constitutions.

A history of the defendant township's zoning as it relates to mobile homes extends back to 1951 when trailer camps or parks were first permitted. Four licenses were authorized with 60 units per license. These trailer camps or parks were open to persons of all ages. In 1975 the ordinance was amended to permit upgrading of trailer camps and trailer parks to family mobile home parks which would require upgrading of on-site improvements. Only one park has converted to a family park, that being Land O'Pines with 80 approved spaces. The other 3 trailer parks remain unconverted,

issuance of 4 licenses for senior citizens' mobile home parks with a maximum of 200 units per park and limited occupancy to persons 55 and over with certain exceptions and permitted children only if one of the parents was over the age of 55. In 1969 the number of licenses authorized was increased to 6 and in 1977 the age restriction was reduced from 55 to 50. Five licenses have been issued under the senior citizens' ordinance. 1382 approved spaces presently exist under those licenses.

In 1981 the defendant adopted an ordinance authorizing the issuance of licenses for adult mobile home parks. Three adult licenses were permitted. In addition the holder of a senior citizens' license which was less than 80% developed could convert to an adult park. These licenses permitted occupancy by persons who were 42 years of age or older but would allow "...not more than two (2) additional adults twenty (20) years of age or over who are children, or bona fide members of the immediate family... Of the adult parks where licenses were issued, 582 spaces have been approved.

Plaintiffs attack defendant township's mobile home zoning as exclusionary, in that, because of the age restrictions imposed lower income households and families with children are deprived of realistic housing opportunities in the township.

Under existing law, a municipality is empowered to zone for planned housing developments for the elderly. Indeed in Taxpayer Association of Weymouth v. Weymouth Township, 80 N.J. 6, the court held that an ordinance which limited use of mobile home units within a trailer park to families having a head of household 52 and over was within the zoning powers of the township delegated by the State. That concept has been codified under N.J.S.A. 40:55D-2(e), that M.L.U.L., as a purpose of zoning to "encourage senior citizen housing." But the zoning must be part of a comprehensive municipal plan for a balanced housing stock. (QUOTE FROM PAGE 51)

The court finds that the mobile home zoning scheme adopted over the years by the defendant township was not implemented as part of a comprehensive municipal plan; that the age restrict:

lower income households and families with children, and that, therefore, it must modify prospectively its ordinances to provide realistic opportunities for additional family mobile homes.

(1) Plaintiffs' expert established that mobile homes have grown in popularity dramatically over the last 20 years, primarily because of production costs being 40-50% lower than conventional site built homes; and because of their increase in size.

The Sup. Court in South Burlington City N.A.A.C.P. v. Mt. Laurel, 92 N.J. 158 (Mt. Laurel II), acknowledged that low cost mobile homes can be a device to meet fair share obligations by a municipality.

Nationwide, 46% of mobile homeowners are under 40 years of age; 37% have children under 18, their median income was \$12,000 in 1980 compared to \$20,000 for all homeowners.

Demand from the market place naturally reveals that mobile home households are more likely to be <sup>from</sup> young families or elderly households, who prefer <sup>the</sup> lower costs and maintenance provided by mobile home living and who are limited in their housing options

According to the data presented, a low income family in Ocean County earns up to \$12,500 and a moderate income family earns up to \$23,350. Accepting the expert's testimony that approximately 30% of income is devoted to housing, low to moderate income families would have between \$300 and \$600 a month available for housing costs, exclusive of utilities. Plaintiffs' expert established that total monthly housing costs for a mobile home on a rented lot would approximate \$480 per month as opposed to approximately \$835 per month for a 1200 sq. ft. single family home.

Clearly, mobile home living is a realistic affordable alternative to low and moderate income families. In contrast, monthly housing costs for single family homes might result in excluding families in the lower economic strata.

In Jackson Township, four trailer parks or camps permit families. Three of those are trailer camps, which, according to the testimony, are not of a type which provides realistic

transient, less permanent population. The on-site improvements at these camps are far below the site improvements of trailer parks. Therefore, the court does not consider these camps as providing a housing alternative to young families or families of low to moderate incomes, who are seeking permanent residence in the Jackson community. Therefore, only one park, Land O'Pines permits families without age restriction. This means that of the 1622 approved units realistically available in Jackson Township, only 80, or less than 5%, permit families. The rest, 95%, are age restricted: (54% seniors; 41% adults). Thus the age restrictions provide very little realistic opportunities to families with children, to find mobile home units available.

Moreover, an examination of the history of these ordinances reveals that they were not adopted as part of a "comprehensive municipal plan for a balanced housing stock". Weymouth, 80 N.J. page 50. The Committee never studied the need for senior citizen housing, adult housing or ever considered the mobile home ordinances within the framework of realistic housing for all of the population, nor is there evidence that any "purpose of zoning" was advanced, or that the public health and safety were factors when the township imposed the age restrictions.

The court is also troubled with the reasonableness of the "adult park" age restrictions - that is, restricted to persons 42 years of age or over (2 children, 20 or over).

In Weymouth the court found that a 52 and over cut off date did not violate the equal protection requirement of the State and Federal Constitutions, indicating that the specification is a legislative judgment which ought not to be disturbed unless it exceeds the bounds of reasonable choice.

The court noted the increased number of Americans retired in their 50's; that there begins a decline in income in the 50's; and that the median age at which men and woman become grandparents is 57 and 54 respectively. It noted a sharp rise in the percentage of population which is over 65, and, therefore a need for housing for this group.

But these considerations do not apply to age 42:

(1) Earning power is still increasing;

(2) ~~Some~~ <sup>NONE</sup> of the special factors associated with senior citizens apply to 42 year olds.

The only difference between a 42 year old married and a old married is that the former would be less likely to have s children than the latter.

Therefore, the court finds no reasonable basis for the 4 old age restriction.

I am satisfied for these reasons that the age restrictio imposed by the municipality are not part of a comprehensive municipal plan, that they contributed to a pattern of exclusi zoning and that the adult parks do not advance the needs of persons of retirement age.

What is the appropriate remedy?

(a) The 3 senior parks should remain restricted by age.

This is because is would be inappropriate to open up those pa to all ages when so many persons of retirement age have invest time and money to move into a retirement park relying upon th senior park restrictions. The court directs, however, that t

4 unissued licensess consisting of 350 unit parks for senior citizens shall be issued as open parks without age restriction

(b) The court, by striking down the age restrictions of the adult parks, hereby opens each of those parks to persons of all ages. However, since the Jackson Estates park is prim filled with senior citizens because it converted from senior adult, the defendant township has the option of re-issuing that license as a senior park. The one remaining unissued license for an adult park shall be issued as an open park.

(c) No age restricted license shall be authorized and issued by the defendant municipality until the remaining unis licenses are issued in accordance with this order.

Plaintiffs Gregory and Judith Chasar and Robert and Cher O'Connor shall be permitted to remain in their mobile home pa provided, however, that upon sale of their unit, they shall v

60 days move from the party.

shall remain restricted.

The court is not passing on the issue of whether defendant township has or is meeting its fair share obligations to provide housing for low and moderate incomes. Some testimony has been given as to available high density housing, but no evidence was produced to establish that this housing would be a realistic source of housing for lower income families. The court's ruling is limited to the issue of the legality of the mobile home ordinances as they restrict occupancy based on age.

Attorney for the defendants to prepare the appropriate order. The court does not retain jurisdiction.