

ML - Morris County Fair Housing Council
v. Benton Twp

6/16/86

Brief in support of motion to intervene

on behalf of Δ -interveners, Sisters of Sorrowful
Mother Primary Care Corporation and Sisters of the
Sorrowful Mother Senior Services Corp.

P 10

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STEPHEN SKILLMAN, J.S.C.

MORRIS COUNTY FAIR HOUSING COUNCIL)	SUPERIOR COURT OF NEW JERSEY
et als.,)	LAW DIVISION: MIDDLESEX/
Plaintiffs,)	MORRIS COUNTIES
vs.)	DOCKET NO. L-6001-78 P.W.
BOONTON TOWNSHIP, et als.)	(Denville Township)
Defendants.)	Civil Action

BRIEF IN SUPPORT OF MOTION TO INTERVENE

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On the Brief

PRELIMINARY STATEMENT

This Brief is submitted on behalf of the defendant-intervenors, Sisters of the Sorrowful Mother Primary Care Corporation ("PCC") and Sisters of the Sorrowful Mother Senior Services Corporation ("SSC") in support of their Motion to Intervene in an action entitled Morris County Fair Housing Council v. Boonton Township (Docket No. L-6001-78 P.W.).

BACKGROUND OF THE SISTERS OF THE SORROWFUL MOTHER

The defendant-intervenors in this action, PCC and SSC, are part of a health care system owned and operated by the Sisters of the Sorrowful Mother of the Denville Province ("Sisters"), a congregation of Catholic Sisters who operate under the auspices of the Roman Catholic Church and dedicated to the maintenance and furtherance of the principles and tenets of the Roman Catholic Church. The Sisters of the Sorrowful Mother, in response to a growing need for health care in the community, founded St. Clare's Hospital ("St. Clare's") located in Denville, New Jersey in 1953. St. Clare's (now St. Clare's/Riverside Medical Center) is a non-profit corporation of New Jersey, which has as its corporate member, the Sisters of the Sorrowful Mother Health Care Corporation, a non-profit corporation, and who has as its sole member the Sisters of the Sorrowful Mother Ministry Corporation ("Ministry"), also a non-profit corporation.

In addition, the Sisters also operate St. Francis Health

Resort, a home for the indigent, the sick and the elderly, located in Denville, New Jersey.

The mission of SSC (which will soon merge with St. Francis Health Resort) is committed to providing a range of preventive, supportive and treatment services, in the physical, psychological, and spiritual dimensions necessary to insure an adequate support system for the aging population.

All of the above institutions are operated by the Sisters under a health care system which is dedicated to addressing the total range of health care needs of community residents throughout Morris County. In order to fulfill the Mission of the Sisters and their health care institutions, a campus has been formulated over time according to a master plan aimed at providing on one contiguous site the elements of care necessary for meeting the physical health, psychological well-being and spiritual requirements of community residents.

The proposed network of services include inpatient-outpatient services, residential services and programs designed to improve the quality of life at home. Some of the objectives of these services are the development of a comprehensive range of long-term care and support services providing a community-based, long-term care alternative for the committed elderly in New Jersey state psychiatric hospitals, and providing through hospital and outreach services routine preventive health as well as primary health care.

In order to obtain some of these long-range objectives, the Sisters have proposed two projects through two of its

institutions: SSM/PCC and SSM/SSC. Through PCC, the Sisters hope to develop two 30,000 square feet professional office buildings (making a total of 60,000 square feet) to be located on the southerly side of Pocono Road at or near its intersection with the Rockaway River in the Township of Denville. It is proposed that hospital-based physicians, i.e. those physicians under contract with St. Clare's/Riverside Medical Center, Inc., will be able to open satellite offices and perform vitally needed services for the Medical Center and the community in the proposed office buildings.

In so doing, additional ambulatory access for patients and their families will be provided to a regional population not currently served by the Medical Center. In addition, a magnetic resonance imaging service will be provided, which is a new and highly technical diagnostic process, unavailable to the communities served by the Medical Center and which can only be provided in an off-site location.

This office facility will also be used for corporate headquarters for the multiple health care corporations previously mentioned, all under the sponsorship of the Sisters of the Sorrowful Mother of the Denville Province. Among these will be corporations whose non-profit charter calls for health services geared solely to the growing elderly population of the 19 municipalities served by the Medical Center.

These two office buildings will be directly across the street from the second project proposed by the Sisters, a Life Care Center composed of individual living units, a skilled

nursing facility and an array of home-bound and out-patient services geared to the elderly and for the benefit of the general community. The Life Care Center is to be constructed by SSM/SSC, another member of the Sisters of the Sorrowful Mother Health Care System. Occupants of the medical office buildings will have easy access to this Life Care Center, facilitating their ability to give the necessary medical attention to Center residents.

Both of these projects are essential elements of the long range health care programs the Sisters have designed to meet the growing health needs of the community. The plan is regional in scope, with residents expected to come from a market area between 15 and 25 miles in radius from the campus site in Denville. The programs and services included in the plan are based on surveys of community need and are designed to avoid duplication of existing community and private resources for the elderly.

FACTUAL STATEMENT

The plaintiffs in this action, Morris County Fair Housing Council, have applied for imposition of conditions upon the transfer of the present action involving Denville Township to the Council on Affordable Housing. Plaintiff's seek interlocutory restraints against Denville Township, its Planning Board and its Zoning Board of Adjustment, allegedly pursuant to the procedures as set forth in Hills Development Corporation v. Township of Bernards, Docket No. A-122-85, February 20, 1986 (hereinafter "Mt. Laurel III"). Plaintiffs seek through such restraints to preserve "scarce resources" pending the final disposition of this matter by the Council on Affordable Housing so as to "protect and assume the municipality's future ability to comply with its Mount Laurel obligations. "Mt. Laurel III, slip. op. at 88.

Defendant-intervenor PCC has applied for site plan approval of its proposed 60,000 square feet medical office buildings from the Denville Planning Board and a hearing has been scheduled for June 12, 1986. In March of 1986, the Honorable Jacques H. Gascoyne, J.S.C., of the Superior Court of New Jersey, turned PCC down for the required gallonage (7,800 gallons) for the project since Denville at that time had no available gallonage. PCC is now on the sewage waiting list with the Denville Sewer Ban Relief Committee and is presently waiting for gallonage approval. In March of 1986, Judge

Gascoyne, in an oral opinion, enunciated a plan whereby Denville would be allocated 215,000+ gallons per day.

Defendant-intervenor SSC has not yet applied for a site plan hearing for its Life Care Center before the Denville Planning Board but is expected to make an application in the near future. In response to a Motion made by the Public Advocate, the Denville Township Planning Board and the Denville Township Zoning Board of Adjustment were joined as parties in the within action by the Honorable Stephen Skillman on May 14, 1986.

Applicants, PCC and SSC, seek leave to intervene both as a matter of right pursuant to R. 4:33-1, or under the permissive intervention rule, R. 4:33-2. We address each of these grounds for intervention in turn.

LEGAL ARGUMENT

APPLICANTS ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

As noted previously, this Court will conduct a hearing to determine whether plaintiffs will be permitted to impose conditions upon the transfer of the present action involving Denville Township to the Council on Affordable Housing.

Under R. 4:33-1, defendant-intervenors are entitled to intervene in the proceeding as a matter of right. R. 4:33-1 provides:

Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Under R. 4:33-1, an applicant must show the following:

1. That he claims an interest in the transaction or property which is the subject of the litigation and he is so situated that disposition of the action may as a practical matter impair or impede this ability to protect the interest;
2. The existing parties have not demonstrated that they are adequately protecting this interest; and
3. The application is timely. Vicendese v. J-Fad, Inc., 160 N.J. Super. 373, 378-9 (Ch. Div. 1978).

Applicants, PCC and SSC, have satisfied all three requirements.

The applicants have an interest in the present litigation. PCC will be applying for site plan approval of its medical office building on June 12, 1986 and is on a waiting list for sewage gallonage. SSC in the future will be applying for site plan approval of its Life Care Center. If the plaintiffs are successful in imposing the aforesaid conditions and restraints upon transfer of this case to the Council on Affordable Housing, then the interests of PCC and SSC will be seriously affected. The effect of the imposition of restraints to the applicants will be significant.

Secondly, reviewing the parties in the present action, there is no party who has an interest which is similar to that of the applicants nor would be likely to protect the interests of the applicants for gallonage and site plan approval. Defendants, Denville Township, its Planning Board and Zoning Board of Adjustment cannot be expected to protect the interests of site plan applicants as there is no compelling reason for them to do so. The plaintiffs have interests adverse to site plan applicants because their primary concern is preservation of scarce resources and ensuring a municipality's compliance with Mount Laurel housing obligations. The plaintiffs cannot be expected to, nor are they required to protect the interests of Intervenors. Therefore, no other party has an interest similar to that of SSC and PCC.

The remaining criteria of R. 4:33-1, that the motion to intervene be timely, has been satisfied. The application to

impose restraints was made by the applicant on April 21, 1986. No hearing date has been scheduled by this Court. The applicants have made their application promptly and before any substantive proceedings have taken place.

Thus, the defendant-intervenors have demonstrated that they have satisfied all of the requirements of R. 4:33-1 and it is respectfully requested that their intervention as a matter of right be granted.

Finally, if the Court determines that this application is not a proper one under R. 4:33-1, then it is respectfully submitted that the applicants be allowed to intervene under the provisions of R. 4:33-2, the so-called permissive intervention rule.

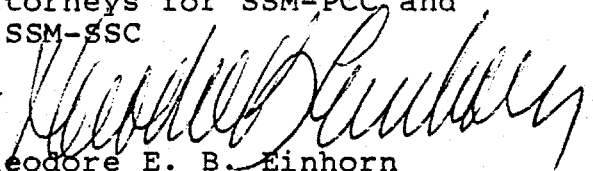
CONCLUSION

Based upon the foregoing reasons, it is respectfully submitted that the relief sought by this Motion be granted.

Respectfully submitted,

EINHORN, HARRIS & PLATT, P.C.
Attorneys for SSM-PCC and
SSM-SSC

By


Theodore E. B. Einhorn