

Municipalities fight COAH Transfer
UL v. Carter, Monroe

11/11/85

- 2 letters to the Appellate Division on Plaintiffs behalf asking Monroe's motion for leave to appeal and for a stay of the order denying transfer be denied
- Cover letter w/ filing instructions

pgs. 8

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November 11, 1985

Honorable Judges of the Appellate Division
 Superior Court of New Jersey
 Hughes Justice Complex
 CN 006
 Trenton, New Jersey 08625

Re: Urban League of Greater New
 Brunswick, et al. v. The Mayor
 and Council of the Borough of
 Carteret, et al., and Lori
 Associates and HADB Associates v.
 Monroe Township (consolidated case),
 on Motion for Leave to Appeal by
 Monroe Township from Order of
 Superior Court of New Jersey,
 Chancery Division (Mount
 Laurel), Docket No. C-4122-73, entered
 by Honorable Eugene D. Serpentelli, on
 October 11, 1985; Appellate Division
Docket No. AM

Your Honors:

Only a brief response is required to Monroe Township's
 frivolous motion for leave to appeal and for a stay of
 Judge Serpentelli's Order denying transfer of this eleven
 year old case to the newly established Council on Affordable
 Housing pursuant to P.L. 1985, c.222, §16.

Honorable Judges of the Appellate Division

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We represent Lori Associates and HABD Associates, landowner-plaintiffs seeking Mount Laurel relief against Monroe Township. The Monroe facet of the captioned Urban League case is on the eve of final judgment. See Judge Serpentelli's opinion, reproduced in Movant's appendix at pages 48a-50a.

The statutory standard applicable to transfer motions is "manifest injustice." As Judge Serpentelli held, characterizing the Monroe transfer motion and those of four other municipalities as "at the one extreme of the transfer spectrum":

"If manifest injustice is to be found in any transfer motions before this Court, it must include all five here today....The mere recitation of the procedural history of these cases compels that conclusion....They have been in the system a long time, particularly, of course, the four Urban League cases [including Monroe Township], which are nearly teenagers. They have been arduous, they have been complex, they have taxed the resources of all of the parties involved. To repeat even a portion of the process before the Council [on Affordable Housing] seems unnecessarily burdensome and unfair to all of the parties...."(Ma55-56).

As we said below:

"Where litigants have labored for more than eleven years to achieve a result that simple morality should have compelled at the outset, where hundreds of hours of trial and appellate time have been expended on essentially frivolous defenses, where

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a recalcitrant municipality has used every conceivable means (including the present motion) to dodge and deflect its clear legal obligations, where final judgment day at last appears to be in sight, it is patently absurd to claim that plaintiffs herein will not sustain 'manifest injustice' if the case is transferred to a brand new, as yet unorganized agency for a proceeding that is likely to start from scratch." Letter-brief, September 18, 1985, copy attached hereto.

Indeed, not only is Monroe Township clearly wrong on the merits, but its motion is in flagrant violation of Mount Laurel II itself. This attempted interlocutory appeal flies in the face of the Supreme Court's strong desire that Mount Laurel litigation be disposed of "with one trial and one appeal". 92 N.J. at 218; see 92 N.J. at 290. More importantly, by seeking reversal of Judge Serpentelli's denial of a stay, Monroe thumbs its nose at the express direction of the Supreme Court (on an appeal in which Monroe was a party, 92 N.J. at 159, 195) that:

"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's motion for leave to appeal and for a stay is a bold-faced attempt to thwart the judicial process, to defeat the Supreme Court's Mount Laurel decision, and, most importantly, to postpone for several more years Monroe's

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solemn moral and legal obligation to provide housing for the poor.

The motion for leave to appeal should be denied. Alternatively, at the very least, if the motion is granted, no stay should be allowed.

Respectfully submitted,

CLAPP & EISENBERG
Attorneys for Lori Associates
and HADB Associates

By: Arnold K. Mytelka
ARNOLD K. MYTELKA

AKM/l1s

cc: Honorable Eugene D. Serpentelli
Eric Neisser, Esq.
Carl S. Bisgaier, Esq.
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Ms. Carla Lerman

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September 18, 1985

Honorable Eugene D. Serpentelli
Ocean County Court House
CN-2191
Toms River, New Jersey 08754

Re: Monroe Development Associates
v. Monroe Township

Dear Judge Serpentelli:

This will respond to Monroe Township's motion, returnable September 27, to transfer this exclusionary zoning case to the Council on Affordable Housing pursuant to P.L. 1985, c.222, §16.* On behalf of plaintiffs Lori Associates and HADB Associates, we oppose Monroe's request.

Does Monroe's motion pass the classic "hee-haw" test? We think not. Where litigants have labored for more than eleven years to achieve a result that simple morality should have compelled at the outset, where hundreds of hours of trial and appellate time have been expended on essentially frivolous defenses, where a recalcitrant municipality has used every conceivable means (including the present motion) to dodge and deflect its clear legal obligations, where

*There are constitutional problems with this section. In our view, however, they need not be reached.

Honorable Eugene D. Serpentelli

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final judgment day at last appears to be in sight, it is patently absurd to claim that plaintiffs herein will not sustain "manifest injustice" if the case is transferred to a brand new, as yet unorganized agency for a proceeding that is likely to start from scratch.

Of course, as Monroe's letter-brief (the 11th unpaginated page) states: "The Township's Mayor and Council have not been opposed to the idea of providing for a realistic opportunity for low and moderate income housing in the Township." Indeed, they have been trying to provide for the poor and near-poor for eleven years now. These things just take time.

We agree with only one sentence in Monroe's letter-brief (also at the 11th page): "This Honorable Court should focus on what will allow for the quickest and best planned construction of low and moderate income housing in the Township." For this reason, Monroe Township's ludicrous motion should be denied.

Respectfully,

CLAPP & EISENBERG

By: *Arnold Kaye*

AKM:lls

cc: Eric Neisser, Esq.
Carl S. Bisgaier, Esq.
Stewart M. Hutt, Esq.
Mario Apuzzo, Esq.
Carl D. Silverman, Esq.
Ms. Carla Lerman, Esq.

bcc: Mr. Al Rieder

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JEROME C. EISENBERG

November 11, 1985

Ms. Elizabeth McLaughlin
Clerk, Appellate Division
Superior Court of New Jersey
Hughes Justice Complex
CN 006
Trenton, New Jersey 08625

Re: Urban League of Greater New
Brunswick, et al. v. The Mayor
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Chancery Division (Mount
Laurel), Docket No. C-4122-73, entered
by Honorable Eugene D. Serpentelli, on
October 11, 1985; Appellate Division
Docket No. AM

Dear Ms. McLaughlin:

Enclosed for filing are the original and four copies
of our Letter Brief in opposition to Monroe Township's

Ms. Elizabeth McLaughlin

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motion for leave to appeal and for a stay. Copies of this Letter Brief are being served upon all counsel and filed with Judge Serpentelli.

Sincerely,

Arnold Kalyetta

cc: Honorable Eugene D. Serpentelli
Eric Neisser, Esq.
Carl Bisgaier, Esq.
Stewart M. Hutt, Esq.
Mario Apuzzo, Esq.
Carl D. Silverman, Esq.
Ms. Carla Lerman