CH-Morris County Fair Housing Council v. Boonton Twp (Denville) 4/30/86

Letter in lieu of formal brief submitted in opposition to motion of the Public Advocate to join additional parties.

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April 30, 1986

Honorable Stephen Skillman, J.S.C.
Superior Court of New Jersey
Middlesex County Court House
New Brunswick, NJ 08903

Re: Morris County Fair Housing Council
v. Boonton Township, et al
Docket #L-6001-78 P.W.

Dear Judge Skillman:

We represent the Denville Township Zoning Board of Adjustment. The following letter in lieu of formal brief is submitted in opposition to the motion of the Public Advocate to join additional parties to the above-entitled matter.

A detailed formal brief has previously been filed by the Township of Randolph in opposition to the Public Advocate's motion to join additional parties. We join in the arguments raised by counsel for the Township of Randolph and respectfully incorporate them herein as if setforth at length.

In addition to the arguments raised by the Township of Randolph, we note that Plaintiffs fail to cite any rules upon which the instant motions are based. We also maintain, as does the Township of Randolph, that the motion should be dismissed for failure to comply with appropriate rules of court, for lack of jurisdiction and for other reasons as setforth in greater detail below.

STATEMENT OF FACTS

The facts in this matter have been presented previously to this Court as setforth in the brief submitted by the Township of Randolph. Accordingly, we submit, likewise, that it is not necessary to further reiterate those facts herein. A detailed recitation, of the facts in this matter are setforth in the Supreme Court's decision in The Hills Development Co. v. Township of Bernards, (A-122-85) N.J. (1986).

STATEMENT OF PROCEDURAL HISTORY

On or about April 10, 1986, Plaintiffs moved before the Honorable Stephen Skillman, J.S.C., for accelerated discovery in the above-entitled matter. An order granting that application was subsequently signed by the court.

A brief was submitted by Plaintiff, Morris County Fair Housing Council in support of an additional application for imposition of conditions upon the transfer of this matter, involving Denville Township, to the Council on Affordable Housing. One of the conditions sought to be imposed by the Plaintiffs was the joinder of additional entities as parties to this litigation and the imposition of interlocutory restraints against those entities. On the final page of its brief, Plaintiff concludes that the Denville Township Planning Board, Denville Township Zoning Board of Adjustment and Rockaway Regional Sewage Authority be adjoined as parties in this matter. Nowhere in the Plaintiff's papers is there any other specific reference to any of these entities setting forth the reasons for joinder.

On or about April 10, 1986, the Honorable Stephen Skillman, J.S.C., granted Plaintiff's application for accelerated responses to interrogatories and notices to produce. The court further ordered that any response to that part of the motion seeking to add parties be filed by April 23, 1986, or ten days after receipt of the Plaintiff's brief, whichever is later.

On or about April 24, 1986, Plaintiff's brief was received by counsel to the Denville Zoning Board of Adjustment. Accordingly, this entity's response is due on May 5, 1986.

This letter in lieu of brief is submitted in opposition to Plaintiff's application for joinder.

LEGAL ARGUMENT

POINT I

PLAINTIFF'S MOTION FOR JOINDER OF PARTIES SHOULD BE DISMISSED.

There are numerous defects in the application sought by Plaintiffs, as setforth at length in the brief of Randolph Township. Foremost, we note that the grounds upon which this application is sought allegedly are to obtain restraints to preserve "scarce resources" pending the final disposition of this matter by the Council on Affordable Housing so as to "protect and assure the municipality's future ability to comply with its Mount Laurel Obligations." The Hills Development, slip opinion at 88.

It would appear from Plaintiff's motion papers that the application would pertain to the Denville Zoning Board of Adjustment insofar as any approvals for site plan or subdivision applications for development of vacant land may be concerned. None of the remaining six bases setforth in the application of the Plaintiff's would appear to apply to the Denville Zoning Board of Adjustment. Nevertheless, Plaintiff's fail to setforth any factual basis for the instant application. No affidavits, certifications or other evidentiary material upon which such a motion must be supported have been submitted by Plaintiff, therefore, the motion would appear to be procedurally and substantively defective for failure to comply with Rule 1:6-2. Our substantive objections are set forth below.

A. The Denville Township Zoning Board of Adjustment is not an Indispensable Party.

Applications for joinder are governed by Rule 4:28-1. The rule provides in pertinent part that:

> A person who is subject to service of process shall be joined as a party to the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest in the subject of the action and is so situated that the disposition of the action in his absence may either (i) as a practical matter impair or impede his ability to protect that interest or ~~(ii) leave any~~ of the persons already ~~parties subject to a~~ substantial risk of incurring double, multiple or other inconsistent obligations by reason of his claimed interest.

We submit that the Denville Zoning Board of Adjustment is not an indispensable party to this litigation. The relief sought by the Plaintiffs is within the ambit of the present defendants to deal with. Furthermore, Plaintiffs have setforth no reasons whatsoever for seeking joinder at this time when the instant litigation has progressed for more than seven years.

Clearly, if the Denville Zoning Board of Adjustment were in fact an indispensable party the appropriate application should have been made by Plaintiffs at the inception of this litigation rather than now after it has been transferred to the Council on Affordable Housing.

As stated by the court in Jennings v. M. & M. Transportation Co., 104 N.J. Super. 265, 272 (Ch. Div. 1969), whether a party is indispenseable depends upon the circumstances of the particular case. The court continued on the say that "a party is not truly indispenseable unless he has an interest inevitably involved in the subject matter before the court and the a judgment cannot justly be made between the litigants without adjudging or necessarily affecting the absentee's interest." Id. at 272; See Allen B. DuMont Labs, Inc. v. Marcalus Mfg. Co., 30 N.J. 290, 298 (1959).

In conclusion, it is clear the Plaintiffs have already commenced this litigation against all indispenseable parties, by sueing the Township of Denville. It is totally unnecessary and duplicative to now require the adjoinder of the Denville Zoning Board of Adjustment in this litigation. This is clearly a tactical maneuver by Plaintiffs to pressure the defendants and should not be permitted by this court.

B. This Court lacks jurisdiction to join any parties.

As this Court is well aware, the instant matter was transferred to the Council on Affordable Housing for final disposition. Since that has occurred, this Court does not have general jurisdiction over the matter. The jurisdiction of this court is very strictly circumscribed by the recent decision of the Supreme Court in The Hills Development, supra at 30.

Therein, the Supreme Court stated that trial courts may impose conditions upon the transfer of a matter to preserve the municipalities' ability to satisfy their Mount Laurel obligations. Id. The Court did not specifically include joinder of parties as one of the conditions which may be imposed following the transfer of a case to the Council on Affordable Housing. Once the matter has been transferred, the jurisdiction of the court has ceased. The imposition of conditions should have been addressed by Plaintiffs prior to transfer to the Fair Housing Council. Since Plaintiffs failed to seek the inclusion of such conditions at the time of transfer, they should not now be permitted to retroactively seek such relief.

The conclusions setforth above are supported by the Supreme Court's decisions in Mount Laurel Cases. Foremost, The Hills Development decision clearly indicates that the legislative intent in creating the Fair Housing Council was to remove the courts from this area of controversy. Rather, an administrative agency with specialized expertise was legislatively created to deal with these complex issues. To now have this Court impose its jurisdiction over that agency after the transfer of the case would be to circumvent legislative intent as supported by the Supreme Court's decision. See The Hills Development, supra at 58-59.

In sum, any applications at this point should more appropriately be made to the Council on Affordable Housing rather than to this Court. Since the application for joinder was not made prior to or at the time of transfer, this Court is without jurisdiction to consider a motion to join additional parties. The jurisdiction conferred upon this Court by the New Jersey Supreme Court was solely to consider the imposition of conditions to preserve scarce resources. Motions concerning discovery, joinder or other procedural issues are clearly outside the scope of jurisdiction of this court and should appropriately be submitted to the administrative agency itself.

C. Reasonable conditions do not include a joinder of additional parties.

As setforth in The Hills Development Case, supra at 86-89, the Council on Affordable Housing may require as a condition of its exercise of jurisdiction that the applying municipality take appropriate measures to preserve "scarce resources". Reference is specifically made to the "applying municipality" and does not mention any other entities such as a Zoning Board of Adjustment, Planning Board or other entity. This ommision was obviously intentional.

The judiciary is given certain powers with respect to transfer of cases to the Council with limitations. As setforth by the Supreme Court,

> "...the judiciary has the power, upon transfer, to impose those same conditions designed to conserve scarce resources that the Council might have imposed were it fully in operation." supra at 87 .

As indicated previously, there is no reference to joinder by the Supreme Court. Furthermore, emphasis is placed on imposing these conditions upon the "applying municipality" and does not refer to any other entities. Therefore, it is clear that the Supreme Court did not intend to extend the court's jurisdiction to other entities and also did not increase the jurisdiction of the judiciary to join additional parties. We submit, therefore, that it was not the intent of the court to extend this jurisdiction nor should this court now permit the joinder of additional parties, including the Denville Township Zoning Board of Adjustment, since joinder is not one of the reasonable conditions contemplated by the Supreme Court in The Hills Development Case.

The same argument concerning lack of jurisdiction applies to the Council on Affordable Housing. Since the Court in The Hills Development Case, supra, specifically refers to the "applying municipality," the additional conditions cannot be imposed upon other entities which are not before the Affordable Housing Council. Furthermore, the Council does not have the jurisdiction, at this time, to join additional parties either.

In conclusion, it is respectfully submitted that the instant motion filed by the Public Advocate should be denied. It is wholly inappropriate to now permit joinder of additional parties since this matter has progressed almost to conclusion over a period of years without the need for including the Denville Township Zoning Board of Adjustment. Furthermore, we also submit that this Court and the Council on Affordable Housing do not have jurisdiction to add additional parties under the Plaintiffs theory that joinder is included in the

reasonable conditions referred to by the Supreme Court in The Hills Development Case.

We respectfully request the opportunity to orally argue our opposition to this motion before the Court to present additional details concerning the applicability and this motion to the Denville Township Zoning Board of Adjustment. This application is made pursuant to Rule 1:6-2 (e).

CONCLUSION

For the foregoing reasons, it is respectfully urged that this Court deny Plaintiff's application to join the Denville Township Zoning Board of Adjustment as a party defendant in the above-entitled matter.

Respectfully submitted,

HARPER, HANSBURY & MARTIN, P.A.

John J. Harper

JJH:FMK:jh

cc: Ms. Dolores Thornley
All Counsel

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX/MORRIS
COUNTIES
DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR HOUSING COUNCIL, et al.,
Plaintiffs,

vs.

BOONTON TOWNSHIP, et al.,

Defendants.

Civil Action

(Mt. Laurel Action)

ORDER

THIS matter having been opened to the Court by Plaintiffs Morris County Fair Housing Council, et al upon a motion to join the Denville Township Zoning Board of Adjustment, Denville Township Planning Board, and Rockaway Valley Regional Sewage Authority as parties defendant in the above-entitled matter, and opposed by the Denville Township Zoning Board of Adjustment, John J. Harper, Esq., appearing, and the Court having considered the papers and arguments of the respective parties, and for other good cause having been shown;

IT IS on this day of May, 1986 ORDERED;

That Plaintiff's motion for joinder of additional parties be and is hereby denied.

HON. STEPHEN SKILLMAN, J.S.C.