CH - JZR Associates, Inc. v. Franklin (Franklin) Dec. 11, 1985

Defendants Brief to the Justices of the Supreme Court
In opposition to tranfer to COAH

"On appeal from an Interlocutory Order of Superior Court of New Jersey, Law Division, Somerset / Ocean Counties."

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CH000053B

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In Reply
Refer to File No.

December 11, 1985

The Honorable Justices of the
New Jersey Supreme Court
c/o Stephen W. Townsend, Clerk
Hughes Justice Complex
CN-970
Trenton, New Jersey 08625

Re: JZR Associates, Inc.,Rakeco Developers, Inc.,
and Flama Construction Corp.,
Plaintiffs-Respondents v.
Township of Franklin, et al,
Defendants-Appellants.

(Supreme Court, Docket No.: 24,799
A-133)

On appeal from an interlocutory order of
Superior Court of New Jersey, Law Division,
Somerset/Ocean Counties.

Sat below: Hon. Eugene D. Serpentelli, A.J.S.C.

Letter-Repy Brief on behalf of above-captioned
Plaintiffs-Respondents.

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On Brief: Francis P. Linnus, Esq.
Mark A. Razzano, Esq.

Dear Honorable Justices:

This letter-reply brief responds on behalf of Plaintiffs-Respondents to the brief for Defendants-Appellants, Township of Franklin, et al, dated December 3, 1985.

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

A statement of relevant facts and procedural history is set forth in the "Joint Brief on Behalf of All Above-Captioned Plaintiffs/Respondents" herein at pages 1-2.

POINT I: THERE IS NO SINGLE DEFINITION OF MANIFEST INJUSTICE AS DEFENDANT-APPELLANT CONTENDS.

Defendant-appellant, in its brief, alleges that "manifest injustice", as interpreted by the courts, has a common meaning in the different contexts in which the court has used it as a standard. Db 4-1, et seq. This "common thread" of meaning which defendant-appellant alleges is no more than that, i.e., a common thread.

To take the "common thread" theory and argue that manifest injustice has a single definition is incorrect. Defendant-appellant has struggled to find some common standard which the courts have applied in various and diverse types of cases, and then offered this over-generalization as a concrete definition of manifest injustice.

It is obvious from a reading of the cases that the court uses different standards in contemplating a manifest injustice issue. Pb 7-36. It is also obvious that defendant-appellant has failed to include R.4:69-5 as one of its contexts. Exhaustion of administrative remedies is undeniably a key factor to be considered in the case at bar. R. 4:69-5 applies to such a case, yet defendant-appellant does not consider the court rule in its search for a definition.

Plaintiff-respondent repectfully submits that defendant-appellant is incorrect in its attempt to define "manifest injustice".

POINT II: DE NOVO REVIEW IS NOT THE PROPER SCOPE OF APPELLATE REVIEW.

Defendant-appellant's contention that the proper scope of appellate review is one of de novo is incorrect as applied to this case. De novo review is proper only in cases where the court below has erred in the application of the law. Db 21-1, et seq. Plaintiff respondent respectfully submits that the learned judge below correctly applied the law. Therefore, the proper scope of appellate review is whether or not said learned jduge abused his discretion in denying defendant-appellant's motion. Pb 3-1, et seq.

POINT III: TRANSFER TO THE COUNCIL WILL UNNECESSARILY DELAY IMPLEMENTATION OF THE CONSTITUTIONAL MANDATE.

Defendant-appellant contends that a transfer under the Act will not unnecessarily delay the implementation of the constitutional mandate. Db 24-10, et seq. Defendant-appellant believes two years is all the time needed to conclude the pending litigation should the case be transferred to the Council. Db 24-17.

Defendant-appellant characterizes the trial judge's opinion that the case can be concluded in six months as "wishful thinking". Db 16-7. This comment is based on the expectations of lengthy appeals of fundamental issues already decided. Db 16-7, et seq. All the reasons defendant-appellant offers for six months time period being "wishful thinking" are a result of defendant-appellant's refusal to accept its obligation under the Mt. Laurel doctrine.

Defendant-appellant fails to consider appeals which may be taken from the Council's decisions, if any, when it proposed a two year time period for conclusion before the Council. The only "wishful thinking" is the defendant-appellant's.

POINT IV: THE COUNCIL CANNOT CONCLUDE THIS CASE FASTER THAN THE TRIAL COURT.

Every benefit of review and mediation available under the Act is available in the Court. Furthermore, the Court has greater jurisdiction and remedial powers than the Council does under the Act.

Defendnats-appellant's brief claims "the disadvantage of the delay is overcome by the benefits of the additional available avenues" under the Council. Db 14-16. However, defendants-appellants fails to enumerate any "additional available avenues". Plaintiffs-respondents respectfully submits that such avenues do not exist. Specifically, the Council has no jurisdiction or remedial power over the infrastructure of a municipality, i.e., sewerage authority. Pb 58-10, et seq.. The Court does have such jurisdiction and power. Avenues of settlement regarding a lack of infrastructure would be closed to the Council, yet, open to the Court.

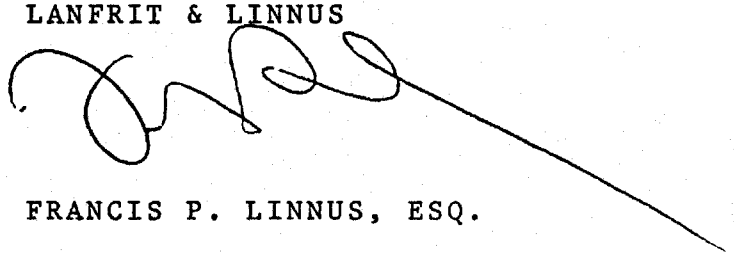
Furthermore, even during the pendency of Franklin Township's application to this Court, the Trial Court through Judge Serpentelli's letter opinion of December 2, 1985, has resolved at that level Franklin Township's total fair share obligation. See Plaintiffs-Respondents Appendix annexed hereto. This case is moving closer and closer to completion.

Plaintiffs-respondents respectfully submits that to begin the case again before the Council, when the case is so close to concluding before the Court, it would be a manifest injustice.

CONCLUSION

For the aforementioned reasons and for the reasons in plaintiff-respondent's earlier brief, the decision below denying the motion to transfer should be affirmed.

Respectfully submitted,
LANFRIT & LINNUS



FRANCIS P. LINNUS, ESQ.

Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI
ASSIGNMENT JUDGE

OCEAN COUNTY COURT HOUSE
C.N. 2191
TOMS RIVER, N.J. 08754

December 2, 1985

LETTER OPINION

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Re: J. W. Field & Company et als v. Twp. of Franklin

Counsel:

I have reviewed the report of Richard Coppola concerning fair share credits and recalculations of indigenous and surplus present need for Franklin Township. I have also reviewed all of the letter responses received concerning Mr. Coppola's report.

I note that several plaintiffs' counsel object to some of the credits recommended by Mr. Coppola based upon such assertions that the credits predate this decade, that they are not disagregated between low and minimum income categories that they are not protected by resale controls. I believe it is fair to say, in a purely theoretical sense, several of the credits would not constitute "hard credits" that qualify towards satisfaction of the Mount Laurel obligation. Thus, for example, while no one would argue with the credit for 400 units given to the Field P.U.D. since they will meet all of the requirements imposed upon new Mount Laurel units, the same cannot be said for the units in Queens Square, Edgemere Apartments and the Ukranian Village. Other claimed credits are also debatable. For example, there is some question as to whether the Neighborhood Preservation Program rehabilitated solely substandard units as defined under AMG.

However, unless the court shows some liberality with respect to the granting of credits under the facts of this case, a municipality which has made some efforts at providing a variety of housing in the past and up to the

present will not be treated any differently than a municipality that has done very little or nothing. I have, therefore, concluded that based on the legal entitlement to certain credits and the equitable right to an adjustment for other units which are not pure credits, the figure of 814 units recommended by Mr. Coppola is appropriate.

The question remains as to how the 814 units should be credited. The report subtracts those units from the total fair share. I believe that works to the prejudice of the municipality since the total fair share includes a phased reallocated present need. I have allocated the 814 credits as follows:

1. There shall be subtracted from the indigenous obligation of 128 units the 100 units rehabilitated by the Township Housing Authority leaving a present indigenous obligation of 28.

2. The phased reallocated present need is 220 units for the first six years. That entire obligation shall be satisfied by application of an additional 220 credits.

3. Four hundred (400) units shall be applied against the prospective need representing the Field P.U.D units.

4. The remaining 94 credits shall be applied against the second phase of the present reallocated need leaving a balance of reallocated need in the second six year period of 126 units.

Therefore, the total fair share of Franklin Township is recapitulated as follows:

1.	Indigenous need -	28 units
2.	Present reallocated need -	0
3.	Prospective need -	1,687
	TOTAL UNITS	1,715

My prior opinion dated October 7, 1985 shall be deemed amended to incorporate these credits. The township shall pursue compliance efforts in accordance with this revised fair share figure.

Very truly yours,

Eugene D. Serpentelli,
A.J.S.C.

EDS:RDH
copy to:
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JZR ASSOCIATES, INC., RAKECO DEVELOPERS, INC., and FLAMA CONSTRUCTION CORP.,	SUPREME COURT OF NEW JERSEY
	DOCKET NO.: 24,799 A-133
Plaintiffs-Respondents	
v.	Civil Action
TOWNSHIP OF FRANKLIN, et al,	
Defendants-Appellants	AFFIDAVIT OF SERVICE

DEBORAH A. MICHALSKI, of full age, being duly sworn according to Law, upon her oath, deposes and says:

1. I am a Legal Secretary employed by the Law Firm of Lanfrit & Linnus, Esqs, Tall Pine Center, 15 Cedar Grove Lane, Suite 24, Somerset, New Jersey.

2. On December 11, 1985 I personally mailed to two (2) copies of the Letter-Reply Brief to all parties noted on the list annexed hereto.

Deborah A. Michalski
DEBORAH A. MICHALSKI

Sworn and Subscribed before me this
11th day of December, 1985.

NOTARY PUBLIC

CAROL A. DAILEY
A Notary Public of New Jersey
My Commission Expires Jan. 30, 1990

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