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In file

IN THE
UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT
NO. 18681

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellees

vs.

THE CHICAGO HOUSING AUTHORITY, et al.,

Defendants-Appellants

On appeal from the Order of July 20, 1970 of the United
States District Court of Illinois.

Honorable Richard B. Austin, Judge Presiding.

MEMORANDUM OF DEFENDANTS-APPELLANTS IN
OPPOSITION TO MOTION OF PLAINTIFFS-
APPELLEES FOR IMMEDIATE ISSUANCE OF
MANDATE ETC.

Defendants-appellants oppose the motion of plaintiffs-appellees for an order under Appellate Rule 41(a) that the Court's mandate in this appeal issue immediately, or, in the alternative, for an order under Appellate Rule 40(a) to shorten the time for the filing of a petition for rehearing.

The case presents a very grave issue - how best to provide desegregated public housing for the poor. That clear issue is obscured by plaintiffs' rhetorical flourishes. There is nothing in

the record which supports the invocation by plaintiffs of the aphorism "justice delayed is justice denied". Had CHA been interested in delay, it would have appealed the July 1969 judgment order. That order, after all, was based upon a summary judgment, and an appeal from such a judgment presents an appellant with greater opportunities than does an appeal from an ordinary judgment. But CHA did not appeal - instead of appealing, CHA commenced to exercise its "best efforts" toward the goal of desegregating public housing in Chicago and providing more housing for poor people. Had CHA appealed from the 1969 judgment the matter might still be unresolved.

The plaintiffs insinuate the phrase "political considerations" into their motion and suggest that such considerations "will in fact be served by each additional day the remand ordered by the Court is delayed". That phrase is in the record before this Court, but there is no basis for plaintiffs' use of it as inuendo to deprive the CHA of the short time permitted by the Rules to file a petition for rehearing. The majority opinion alluded to the phrase (p.6) as used in a July 1969 letter from one CHA Commissioner to Judge Austin.

In that letter that one Commissioner did not express concern about "adverse political consequences"; he feared there would be less housing if the issue became political. What that one Commissioner actually said was: "*** it [is] my judgment that submission of the sites at the present time would make public housing the central issue of the upcoming campaigns and it [is] my fear that the ultimate result would be that less housing would be built. There is abundant historical evidence that resistance to public housing in white areas has been used by political candidates for partisan political purposes. It would be unfortunate if your historic decision got embroiled in a political contest where there was not adequate defense of either public housing or your decision" (A-44).

If there has been any delay in this proceeding it is the delay caused by the novel proceedings espoused by plaintiffs. Had they not objected to defendants motion for a hearing last August, a hearing could have been completed in early September and any appeal from the result - if expedited as this one was - would probably have been decided more quickly than this appeal. There would have been a regular record, no person would have been permitted to play the triple role of lawyer, occurrence witness and expert witness (yet not subject to cross-examination), and the

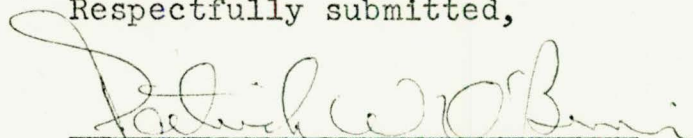
findings of fact of the Trial Judge would have been governed by Rule 52(a). The procedure that was followed has presented difficult and perplexing issues and a divided Court.

In a case decided by a different panel of this Court a few days before this case (Skolnick et al v. Mayor and City Council of Chicago, No. 18878), it was determined that parties litigant did not have the opportunity to have their claims "fully litigated or decided on their merits" when the district court "on its own motion gave some thought" to their claims and "concluded after examining offers of proof" that they were without merit. CHA submits that the normal time for preparing a petition for rehearing is required for, among other matters, a close analysis of the Skolnick opinion to see whether it does not conflict with the Court's current opinion in this case.

Finally, plaintiffs' motion overlooks the fact that the 1969 Judgment Order - especially the "best efforts" provision - is still in full force and effect: CHA did not challenge it when it was issued and CHA does not challenge it now.

For all of the foregoing reasons, plaintiffs-appellants' motion should be denied.

Respectfully submitted,


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Of Counsel:

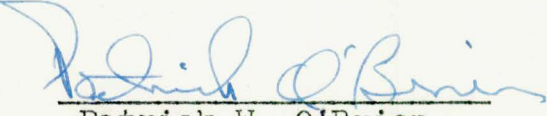
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Dated: December 17, 1970

PROOF OF SERVICE

Patrick W. O'Brien, one of the attorneys for defendants-appellants, certifies that he served a copy of the above and foregoing Memorandum on the attorneys for the plaintiffs-appellees on December 17, 1970.


Patrick W. O'Brien