
In the
United States Court of Appeals
For the Seventh Circuit

Nos. 72-1409, 1410, 1486

DOROTHY GAUTREAUX, et al.,
Plaintiffs-Appellees,
v.

CITY OF CHICAGO and RICHARD J. DALEY,
Mayor, etc.,
Defendants-Appellants.

and

DOROTHY GAUTREAUX, et al.,
Plaintiffs-Appellees,
v.

FRED B. ROTI, et al., Members of the City Council of
the City of Chicago,
Defendants-Appellants.

and

DOROTHY GAUTREAUX, et al.,
Plaintiffs-Appellees,
v.

CHICAGO HOUSING AUTHORITY,
Defendant-Appellant.

On Appeal From The United States District Court
For The Northern District Of Illinois — Eastern Division

REPLY BRIEF FOR APPELLANT
EDWARD R. VRDOLYAK

EDWARD T. JOYCE
LAWRENCE HICKEY
77 West Washington Street
Chicago, Illinois 60602

TABLE OF CONTENTS

	<u>PAGE</u>
ADDITIONAL STATEMENT OF FACTS	2
ARGUMENT	
I Alderman Vrdolyak Has Been Improperly Joined As A Party Defendant	2
II The April 10, 1972 Order Constitutes An Abuse Of The District Court's Equitable Powers	5
CONCLUSION	7

TABLE OF AUTHORITIES

Banks v. Perk, 341 F. Supp. 1175 (N.D. Ohio 1972).

Kelley v. Metropolitan City Board of Education of Nashville, Tennessee, 463 F. 2d 732 (6th Cir. 1972).

United States v. Scotland Neck City Board of Education,
407 U.S. 484 (1972).

Wright v. Council of City of Emporia, 407 U.S. 451 (1972.)

STATUTES

Illinois Revised Statute, Chapter 67-1/2 § 9.

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CHICAGO HOUSING AUTHORITY

Defendant-Appellant

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF ILLINOIS - EASTERN DIVISION

Reply Brief For Appellant EDWARD R. VRDOLYAK

ADDITIONAL STATEMENTS OF FACTS

Alderman Vrdolyak does not accept or adopt plaintiffs characterization of the evidence or the historical background in the case and does not agree that any of such additional statements of facts made by plaintiffs is essential to the determination of the case.

ARGUMENT

Alderman Vrdolyak adopts and incorporates herein by reference the "Argument" appearing in the Reply Brief of the City of Chicago, Mayor Richard J. Daley and other Members of the City Council of the City of Chicago. In addition, Alderman Vrdolyak makes the following additional Arguments:

I

ALDERMAN VRDOLYAK HAS BEEN IMPROPERLY JOINED AS A PARTY DEFENDANT.

The City Council of the City of Chicago has the duty to approve all tentative site selections made by the Chicago Housing Authority. Ill. Rev. Stat. Chapter 67-1/2 § 9. Implicit in this duty is the obligation to investigate each site to determine its suitability for

public housing. The brief of the City of Chicago, Mayor Daley and the other Members of the City Council at pages 5 and 6 shows that the City Council was carrying out this duty when the plaintiffs filed their Supplemental Complaint. Without some showing by plaintiffs that this otherwise legitimate governmental process was being used to deny them the equal protection of the laws, the District Court should not have precipitously joined the Members of the City Council as parties defendant to the law suit, allegedly "for purposes of granting plaintiffs the relief to which they are entitled", where, in fact, no relief was sought from the Members of the City Council and no relief was granted by the April 10, 1972 order. It should be observed that the April 10, 1972 order neither directs the Members of the City Council to take action nor directs them to stop any particular course of conduct.

Apparently, it is plaintiffs' position that the Members of the City Council should have "rubber stamped" the tentative list of sited submitted to them by the Chicago Housing Authority pursuant to the District Court's order. If the District Court did not expect the City Council to exercise its statutory function, it would

not and should not have directed the Chicago Housing Authority to submit sites to the Council for approval.

The evidence elicited at the April 4, 1972 hearing did not establish that the City Council's actions were racially motivated or that, given the nature and scope of the work to be done, the City Council's actions were dilatory. Contrary to the contention of the plaintiffs at page 18 of their brief, the District Court's April 10, 1972 order relies heavily on events occurring prior to the time the Members of the City Council became a party to this action. The order does not, as plaintiff contends, "unambiguously refer to post - June, 1971 non-action," but rather is based on "the evidence in this case, taken together and viewed in their historical context". It is submitted that there is no "historical context" which binds the Members of the City Council and, consequently, the District Court's April 10, 1972 order rests on an illusory foundation.

The position in which the City Council and Alderman Vrdolyak find themselves raises questions of fundamental fairness as to whether a plaintiff through cunning or negligence or ignorance can file an action

against one or more parties, abstract damaging, self-serving and exculpatory testimony directed at a third party who is only then added as a defendant after the law of the case has been decided "for purposes of granting plaintiff relief." This is precisely the position in which the Members of the City Council find themselves.

Plaintiffs cite Banks v. Perk, 341 F. Supp. 1175 (N.D. Ohio 1972), for the proposition that the City Council has the duty "to support and aid progressive proposals which have as their goal the elimination of racial concentrations in their cities." The Banks case is distinguishable from the instant case for precisely the same reason Alderman Vrdolyak has appealed the District Court's April 10, 1972 order. In Banks, the city, the mayor, the building department and the municipal housing authority were all parties to the suit at the time a finding of racial discrimination was made. It also should be noted that the scope of the Banks decision, as it related to the city, dealt with only 150 units and not 1500 units as in the instant case.

II

THE APRIL 10, 1972 ORDER CONSTITUTES AN ABUSE OF THE DISTRICT COURT'S EQUITABLE POWERS.

Plaintiffs correctly observe that the District Court is exercising its equitable powers in fashioning

the relief provided by the April 10, 1972 order. What plaintiffs fail to recognize, however, is that the cases relied upon by the Court and by the plaintiffs in support of that order deal with much more limited problems than a District Court take over of the subsidized housing program for a major urban center and with problems with which District Courts have had twenty years of experience. It should be remembered that District Courts have been dealing with the problems of segregated school systems since 1951. The vast majority of cases relied upon by plaintiffs deal with segregated school systems. For example, Kelley v. Metropolitan City Board of Education of Nashville, Tennessee, 463 F. 2d 732 (6th Cir. 1972), a case relied upon by plaintiffs, has been before the District Court for the Middle District of Tennessee and the Court of Appeals for the Sixth Circuit for 17 years. Certainly, a court that has been dealing with a problem for 17 years will be granted broad equitable powers. Other cases relied upon by plaintiffs, for example, United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972), and Wright v. Council of City of Emporia, 407 U.S. 451 (1972), deal with the narrow issue

of whether a federal court may enjoin state or local officials from taking affirmative action to carve out a new school district from an existing district that has not yet completed the process of desegregating a system of enforced racial segregation. It is submitted that none of plaintiffs' cases support the overly broad exercise of equitable power contained in the April 10, 1972 order.

CONCLUSION

For the reasons set out above, and those appearing in appellants' briefs heretofore filed, Alderman Vrdolyak respectfully asks this Court to reverse the judgment of the District Court, to remand the cause to the District Court with directions to vacate its order of April 10, 1972 and dismiss plaintiffs' Supplemental Complaint as to him.

Respectfully submitted

Edward T. Joyce
Lawrence P. Hickey
Attorneys for Edward R. Vrdolyak
77 West Washington Street
Chicago, Illinois 60602