

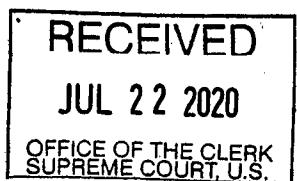
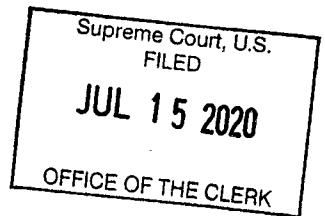
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IN THE
SUPREME COURT OF THE UNITED STATES
MICHAEL S. BARTH,
PETITIONER,
V.
BERNARDS TOWNSHIP PLANNING
BOARD, *ET AL.*,
RESPONDENDTS.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE NEW JERSEY SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

While there are a number of questions and sub-questions in this matter, the overarching question is whether the unconstitutional process of the court below should result in a temporary injunction and or remand back to the New Jersey Supreme Court to ensure United States Constitutional Due Process and Equal Protection is followed?

PARTIES TO THE PROCEEDING

Petitioner Michael S. Barth owns property in Bernards Township, Somerset County, New Jersey, and lives within one mile of the subject property at issue.

Respondent Bernards Township Planning Board is an agency of Bernards Township and has authority to approve site plan applications.

Respondent Islamic Society of Basking Ridge, Inc. is building a community center at 124 Church Street, Bernards Township, New Jersey.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Michael S. Barth respectfully submits this petition for a Writ of Certiorari to the Supreme Court of New Jersey.

OPINIONS BELOW

The February 20, 2020 Order of the Supreme Court of New Jersey denying certiorari (App., *infra* A1). (Postmarked February 25, 2020).

The May 24, 2019 Order of the Supreme Court of New Jersey dismissing interlocutory appeal [allegedly] as “moot.” (App., *infra* A2).

The July 30, 2019 Order of the New Jersey Appellate Division Order (App., *infra* A3).

The June 12, 2019 Orders of the New Jersey Appellate Division Orders (App., *infra* A4-5).

The February 8, 2019 Order of the New Jersey Appellate Division (App., *infra* A6).

The November 19, 2018 Order of the New Jersey Appellate Division Order (App., *infra* A7).

The July 31, 2018 unpublished opinion of the United States District Court, D. New Jersey in Plaza v. Bernards Township Planning Board, is found at 2018 WL 3637515. (App., *infra* A8-21).

JURISDICTION

The New Jersey Supreme Court entered judgment on February 20, 2020. This Court's jurisdiction rests on 28 U.S. Code §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment of the United States Constitution, 28 USC §1441, and U.S. Supreme Court Rule 23.

STATEMENT OF THE CASE

Noting at the outset, it appears Chief Justice Rabner of the New Jersey Supreme Court recused himself from this case (App. A1) similar to it appears his Honor recused himself from Barth v. Township of Bernards, S. Ct. No. 19806, *certiorari* denied, March 9, 2020.

That recusal is no surprise to the extent the New Jersey Court considered these related, based on the timing of the New Jersey Court's near simultaneous action on both cases, and considering Bernards initiated suit in Barth v. Township of Bernards (*Id.*), at best as a nuisance suit to create a workload burden for this case.

A "related" case Quick v. Township of Bernards, D.N.J. 3:17-cv-05595-MAS-LGH, is currently in the Discovery phase.

The Court may recall many of the underlying facts and procedures from ISBR's racist and unconstitutional subpoena attempt in Barth v. The Islamic Society of Basking Ridge, S. Ct. No. 16-1250, rehearing denied August 25, 2017.

Based on Plaza v. Bernards Township Planning Board, 2018 WL 3637515 (D.N.J. 7/31/2015), Respondents would not be prejudiced by a temporary Injunction under Supreme Court Rule 23 pending *certiorari*, since the defendants attempted to "burn up the calendar" in this case through the removal process in Plaza, as their basically identical claims there were already rejected in Smith v. Twp. of Bernards, No. 17-4551, 2017 WL 5892202 (D.N.J. Nov. 29, 2017).

The state courts' reliance below on Plaza for preclusive effect, and the failure to provide even basic constitutional due process on appeal to answer the questions below, is clearly an unconstitutional due process and equal protection violation. Questions raised below included: (See App., A28-29.)

1. Did the ACMS "go fish" service of process violate federal and New Jersey constitutional protections?
2. Is "5 minute" notice of oral arguments adequate when parties were previously notified there would be no oral arguments?
3. Is a trial court Judge that signs an Order and not read his own supporting opinion, *prima facie* evidence of judge bias, and nulls and voids the judge's Order?
4. Did the Appellate Division abuse its discretion to facilitate Defendants' Motion to Dismiss?

5. When the Appellate Division dismissal of plaintiff's appeal was based on plain legal error, and the Division refused to provide a reason for dismissing plaintiff's appeal; is the Division's refusal to reinstate the appeal an unlawful abuse of discretion under other New Jersey case law?
6. Under Piscitelli v. City of Garfield Zoning Board of Adjustment, 237 N.J. 333 (2019), is the conflicted planning board decision below null and void or warrants additional discovery?
7. Is the Order Granting ISBR Motion to Dismiss for Failure to State a Claim, defective?
8. Under Montclair State University v. County of Passaic, 234 N.J. 434 (2018), a local municipal planning board must consider the traffic safety impact of a land use application on an adjoining road, even if that roadway is a "county road", and if not, the MLUL is unconstitutional?
9. Under Piscitelli, Dunbar and In Re Accutane, the current interpretation Whispering Woods at Bamm Hollow, Inc. v. Middletown Tp. Planning Board, 223 N.J. Super. 1, (NJAD 1987) *cert denied* 110 N.J. 175 (1988) needs to be revisited by the New Jersey Supreme Court because it is being unconstitutionally applied, and alternatively, the NJ MLUL is unconstitutional if a "Whispering Woods" hearing can circumvent the principles in the statute?
10. Under Dunbar Homes, Inc. v. Zoning Board of Adjustment of Township of Franklin, 233 N.J. 5456 (2018), is a planning board approval of a sham land use application null and void, and if not, is the NJ MLUL unconstitutional?
11. Under In Re Accutane Litigation, 234 N.J. 340 (2018), is a planning board approval of a land use

application that was based on incompetent testimony, null and void, and if not, is the MLUL unconstitutional?

12. Under Cherokee LCP Land, LLC v. City of Linden Planning Board, 234 N.J. 403 (2018), does a township resident similarly situated to plaintiff have standing in the instant matter?

REASONS FOR GRANTING THE WRIT

The lack of a basis for the state court Orders below is repugnant to the Fourteenth Amendment of the United States Constitution, and is inconsistent with the Court's precedent of basic jurisprudence. To deny this petition for *certiorari*, and to deny this request for an injunction pending *certiorari*, is to reward wrongdoers.

In addition to lacking the most basic due process below, the trial court's "multiple drafts" (it being obvious that the Judge never read before issuing), incorrectly relied for preclusive effect in the instant matter, on Barth v. The Islamic Society of Basking Ridge, S. Ct. No. 16-1250, *rehearing denied* August 26, 2017. (See also App. A 8-21.) As Chief Justice Roberts previously stated, denied "intervention" does not translate to an inability of the "intervenor" to subsequently file suit. (Citation omitted.)

Ironically respondents asked the lower court to dismiss this party's appeal WITHOUT PREJUDICE (See App. A44, line 29[Pa33]), so that when the Appellate Court neglected to specify whether the order was with or without prejudice, when the opposing parties' motion was made to dismiss

WITHOUT PREJUDICE, the court below unconstitutionally abused its discretion in dismissing this party's appeal, based on this Court's reference to such equitable principles referenced in Lomax v. Ortiz-Marquez, 590 U.S. ____ (2020)

The New Jersey Supreme Court and Appellate Court internal coordination was more than just self-serving; that is, coordinating a denial of a motion for a stay pending the disposition of a dispositive case, only to use its own denial of an appeal allegedly as "moot", as an end around to avoid the court having to address its own administrative mismanagement. That mismanagement included when for example the Trial Court "go-fish" process for self-represented party, provided no communication to this self-represented party that it issued any "Orders" or "Updates" (App. A30); and perversion of justice, the type that contravenes this Court's recent decision on party representation in United States v. Sineneng-Smith, 19-67 (S. Ct. May 7, 2020)

This Court has already recently addressed the unconstitutional bias of a state court system (citation omitted); where even the New Jersey Supreme Court documented its own unconstitutional bias when for example, it recorded New Jersey Supreme Court Justice Solomon interaction with a presenter, that Justice Solomon in effect gave counsel Miranda warnings at Oral Arguments, because of the personal family conflict of interest example counsel was providing, when Justice Solomon also said" I was a local councilman, you'll never catch me talking." Piscitelli v. City of Garfield Zoning Board of

Adjustment 223 N.J. 246 (2019). (Transcripts 40 minutes into recording. Transcript omitted.)

This was also evident by the court's own coordination to rush to the "Court House Doors".

This party filed an interlocutory appeal with the New Jersey Supreme Court on February 20, 2019. On May 20, 2019 opposing parties filed defective papers in the Appellate Division to dismiss the appeal (papers didn't even include a motion) (App. A4). However, the record shows the Motion to dismiss WITHOUT PREJUDICE was filed on June 5, 2020 (App. A31.)

Unfortunately, one cannot give the lower courts the benefit of the doubt when the New Jersey Supreme Court dismissed the interlocutory appeal on May 24, 2020 (A2); in between the May 20 and June 5 dates of opposing parties' filings in the appellate division. The court seemingly desperate to find an unconstitutional excuse for the opposing parties, relied on the wrong rule provided by the opposing party. Sadly, opposing parties even referenced the wrong Civil Procedure rule that the Appellate Division, as plain legal error, incorrectly relied as opposing parties' opposition in rushing denying on for a motion for reconsideration. (App. A31.)

As briefed in a matter previously before this court, and as the appended brief and certification in the New Jersey Supreme Court. *See generally Barth v. The Islamic Society of Basking Ridge (Id.)* and App. A8-A21. As those stated, this party became involved in this subject matter after receiving a racist

unconstitutional subpoena from ISBR for attending a municipal Planning Board meeting that reviewed ISBR's application to build a community center, that ironically even ISBR admitted the property wasn't suited, and the planning board denied. Even as Judge Shipp has stated, ISBR subsequently settling a case under RLUIPA does not mean the land use application is not subject to land use restrictions. (Citation omitted.)

The New Jersey Superior Court violated Constitutional and judicial norm from the outset as bias is presumed when a judge issues his opinions without reading them (*see supra*).

The trial court's bias was further exemplified when he further allowed his friend John Belardo testify before the court at a pretrial conference, without being sworn in and not subject to cross examination. Appendix A28.

CONCLUSION

Accordingly, the Petition for Writ of Certiorari to the New Jersey Supreme Court should be granted, and a temporary injunction prohibiting further construction at 124 Church Street, Bernards Township should be issued pending the Court resolution of this Petition for Certification.

Respectfully submitted,

Michael S. Barth
Petitioner Pro Se
July 10, 2020