

RECEIVED

IN THE UNITED STATES COURT OF APPEALS 27 PM '91

FOR THE ELEVENTH CIRCUIT

REGIONAL CLERK
RECEIVED
DO NOT PUBLISH

No. 90-4069

D. C. Docket No. 90-00232 Civ-FTM-15D

LORENE DESSIN, KATRINA TARVER, ANNA
THOMPSON, TONYA JACKSON, on behalf
of themselves and all others similarly
situated,

Plaintiffs-Appellants,

VERSUS

HOUSING AUTHORITY OF THE CITY OF
FT. MYERS, FLOSSIE RILEY, in her
official capacity as Acting Executive
Director of the Housing Authority,
U.S. DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT, JACK KEMP, Secretary of the
U.S. Department of Housing and Urban
Development,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(October 30, 1991)

Before ANDERSON, Circuit Judge, CLARK, Senior Circuit Judge, and
Brown*, Senior District Judge.

PER CURIAM:

*Honorable Wesley E. Brown, Senior U.S. District Judge for the
District of Kansas, sitting by designation.

After oral argument and a careful review of the record, it has become apparent that the district court made a critical finding of fact without affording plaintiffs an adequate opportunity to litigate. Without the benefit of an evidentiary hearing, the district court found that the relocation of the former tenants was not part of the Housing Authority's overall plan to dispose of the subject property.¹ This issue of fact is relevant to the ripeness analysis.² Because the analysis of the ripeness issue is affected by this fact issue, we remand to the district court with instructions to hold an evidentiary hearing, after appropriate discovery, and to address the ripeness issue anew after making appropriate findings as to the relevant facts.³

VACATED and REMANDED.

1. There was evidence in the meager record even at this early stage raising an inference that the tenant relocation was a part of the plan. The complaint alleges that a March 14, 1989, letter from the Authority requested permission to demolish. The Authority's brief to the district court revealed a February 24, 1989, study indicating that rehabilitation was not feasible. Authority Brief, R.5:2. The tenants were apparently relocated thereafter, beginning in March or April of 1989 such that the premises were vacant by August, 1989. In October, 1989, the Authority submitted to HUD a plan for the subject property, which plan was amended in April, 1990.

2. The district court itself recognized this relevance. District Court Order, R.9:8 n.3

3. Other facts may also be relevant. For example, plaintiffs may be able to adduce evidence that the Authority's alleged failure to maintain the property was also part of the overall plan. See 42 U.S.C. §1437p(d) ("A public housing authority shall not take any action to demolish or dispose of a public housing project ... without obtaining the approval of the Secretary")