

IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO

CITY OF SYLVANIA,

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Case No.: CI 03-2373

Plaintiff,

*

Honorable J. Ronald Bowman

vs.

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OPINION AND JUDGMENT ENTRY

THE MOST REVEREND ROBERT W.
DONNELLY, DIOCESAN
ADMINISTRATOR, etc., et al.,

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Defendants.

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This case comes before the Court on the motion for summary judgment filed herein by The Most Reverend Robert W. Donnelly, Diocesan Administrator, Representative of the Toledo Diocese, and St. Joseph Parish, ("Defendants"), on July 1, 2003 . On July 29, 2003, the City of Sylvania, ("Plaintiff"), filed a memorandum in opposition. Finally, on August 22, 2003, the defendants filed a reply brief in support of their motion for summary judgment. Defendants' motion for summary judgment is now decisional.

I.

In the interests of brevity, the Court shall forego a recitation of the facts.

II.

The standard governing a motion for summary judgment is set forth in Civ.R. 56, which provides:

"* * * Summary judgment shall be rendered forthwith if the pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. * * * A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in his favor. * * *" Civ.R. 56(C).

When seeking summary judgment, a party must specifically delineate the basis upon which the motion is brought, *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, syllabus, and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. When a properly supported motion for summary judgment is made, "an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in [the] rule, must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E).

III.

The Religious Land Use and Institutionalized Persons Act, ("RLUIPA"), 42 USC §2000cc, et seq. was intended to protect people from governmental land use regulations that would impose a substantial burden on the exercise of religion. Specifically, RLUIPA provides:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution unless the government demonstrates the imposition of the burden on that person, assembly, or institution -

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling government interest.

The defendants argue that they are entitled to relief since the appropriation action by the plaintiff for the defendants' land, designated as the "Lathrop House," imposes a substantial burden on the defendants' exercise of religion. RLUIPA defines "land use regulation" as "a zoning or landmarking law, or the application of such a law, that limits or restricts the claimant's use or development of land..." *Cottonwood Christian Center v. Cypress Redevelopment Agency* (C.D. Cal. 2002), 218 F.Supp.2d 1203, 1222 quoting 42 U.S.C. §2000cc-5(5). Further, RLUIPA applies to land use regulations that allow the government to make "individualized assessments" of proposed land use. *Church of Jesus Christ of Latter-Day Saints v. City of West Linn* (LUBA No. 2002-155). 483 U.S. 327 (1987). A land use regulation is one that "limits or restricts a claimant's use or development of land***if the claimant has an ownership...interest in the regulated land..." 42 U.S.C. §2000cc-5(5).

First, the Court must decide if RLUIPA is applicable to the instant controversy. In this

case, the plaintiff City made an individual decision to appropriate the property in which the defendants have an ownership interest. The appropriation of this property, the Lathrop House, is a land use regulation. Thus, RLUIPA is applicable in the instant controversy between the plaintiff and the defendants since the land use regulation is based on an "individualized assessment" that has been imposed on the defendants by the plaintiff. *Murphy v. Zoning Commission of the Town of New Milford* (Conn. 2001), 148 F.Supp.2d 173, 184; *Cottonwood* at 1220-1221.

When a party claims protection under RLUIPA, the party has the burden of proving that the government regulation imposes a "substantial burden" on the exercise of religion.¹ *Grace United Methodist Church v. City of Cheyenne*, (2002), 235 F.Supp.2d 1186, 1193.

In order to establish a *prima facie* case that RLUIPA has been violated, a plaintiff must present evidence that the land use regulation in question (1) imposes a substantial burden; (2) on the "religious exercise," (3) of a person, institution, or assembly. 42 U.S.C. §2000cc(a)(1); *Murphy v. Zoning Comm'n of the Town of New Milford*, 148 F.Supp.2d 173, 187 (D.Conn.2001). If the plaintiff makes this *prima facie* showing, the burden shifts to the local government to demonstrate that the land use regulation furthers a compelling governmental interest and that the land use regulation is the least restrictive means of furthering that compelling interest. 42 U.S.C. §2000cc(a)(1)(A)-(B). *Id.* at 1193-1194.

RLUIPA fails to define "substantial burden." *Id.* at 1193-1194 However, "for a burden on religion to be substantial, the government regulation must compel action or inaction with respect to a sincerely held belief; mere inconvenience to the religious institution or adherent is

¹ RLUIPA does not provide immunity to religious institutions from appropriation. *Grace United Methodist Church v. City of Cheyenne*, (2002), 235 F.Supp.2d 1186, 1193. See also *San Jose Christian College v. City of Morgan Hill* (N.D. Cal. 2002), 2002 WL 971779, *2.

insufficient.² *Id.* citing *Werner v. McCotter* (1995) 49 F.3d 1476, 1480; *Jolly v. Coughlin* (2d Cir. 1996), 76 F.3d 468, 477; *Murphy*, 188-189 (stating that fear of being arrested for attending a prayer group is a substantial burden). See also *Elsinore Christian Center v. City of Lake Elsinore* 2003 WL 21543995, (C.D. Cal. June 24, 2003), *6 (“[A] ‘substantial burden on religious exercise’ accrues only where compliance with governmentally dictated or proscribed behavior would cause a religious adherent to trespass on a ‘central religious belief or practice’ ...”); *Cottonwood* at 1227 (A substantial burden is one where the action by the government “prevent[s] him or her from engaging in conduct or having a religious experience which the faith mandates.”)

In other words, “regulations must have a ‘chilling effect’ on the exercise of religion to substantially burden religious exercise.” *Id.* A mere inconvenience on a religious institution is not enough to be considered a substantial burden. *Id.* at 1195 citing *Henderson v. Kennedy* (D.C. Cir. 2001), 265 F.3d 1072, 1074. Thus, the land use regulation must prevent an individual from “engaging in conduct or having a religious experience **which the faith mandates.**” *San Jose Christian College v. City of Morgan Hill* (N.D. Cal. 2002), 2002 WL 97779, *2 (emphasis in the original).

In the instant case, the defendants claim that the plaintiff’s acquisition of the middle 3.77 acres of disputed property located across from the present location of the defendants’ complex renders the Master Plan to expand the parish and school ministry unworkable. (Affidavit of James Floyd at ¶10; Affidavit of Joseph Kunkle at ¶3.) Moreover, the defendants insist that they will be unable to adequately serve their current parishioners due to the space constraints that exist with

² A substantial burden on religion is one that prohibits compliance with a religious experience that is mandated by the religion/faith. *Grace United Methodist Church v. City of Cheyenne* at 1195.

the limitations of their present location.³ Specifically, the defendants rely on *Cottonwood Christian Center*. In *Cottonwood Christian Center*, the city precluded the building of a church, including a 4,700 seat auditorium, on property owned by the Cottonwood Christian Center. *Cottonwood Christian Center* at 1209. In *Cottonwood Christian Center*, the District Court of California found that the city's action which denied the building of the church was a substantial burden on the exercise of religion. *Id.* at 1227.

The instant case is distinguishable from *Cottonwood Christian Center*. Specifically, in *Cottonwood Christian Center*, the church "demonstrated that meeting in one location at one time, as well as providing numerous ministries" was central to its faith. *Id.* at 1212 and 1227. The defendants have not placed any evidence before this Court that shows that a central tenet of their faith requires the acquisition of this property and that failure to do so changes, alters or compromises the faith and/or belief system of the parishioners.⁴

After careful review of all evidence before the Court, the Court finds that the defendants have failed to establish a prima facie case under RLUIPA⁵. While the appropriation action is inconvenient, frustrating and upsetting, it fails to rise to the level of a substantial burden since

³Father Gregory L. Peatee contends that the parishioners are involved in over forty ministries that minister to the spiritual and physical needs of the Sylvania and world communities. Affidavit of Father Gregory L. Peatee at ¶3-4. Further, Father Peatee contends that "[t]he Master Plan, if allowed to continue, will solve the numerous current space problems of the Parish and will allow future growth of the Parish." *Id.* at ¶10.

⁴ The defendants argue that the plaintiff's appropriation of the Lathrop property, stops the construction of the K-3 school; the commons and kitchen area; the gymnasium; the special education facilities; the administrative office; and the parish and school bus traffic.

⁵The Court recognizes that the defendants' Master Plan will have to be changed/altered in view of the pending appropriation action.

parishioners are not coerced or prevented from engaging in a religious experience or practice which is mandated by the defendants' faith.⁶ Thus, the burden never shifts from the defendants to the plaintiff. As such, the plaintiff does not have to establish, under a strict scrutiny review, that appropriation of the Lathrop property was accomplished through the least restrictive means.

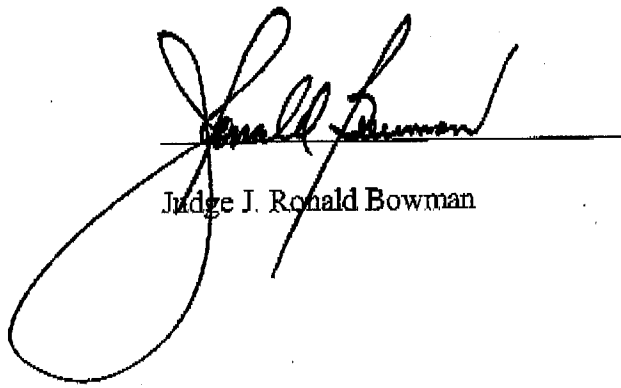
Finally, the argument asserted by the plaintiff regarding the alleged unconstitutional enactment of RLUIPA based on *Elsinore Christian Center* need not be addressed based on the prior ruling in this opinion.

JUDGMENT ENTRY

It is ORDERED, ADJUDGED and DECREED that the motion for summary judgment filed herein on July 1, 2003 by the defendants, The Most Reverend Robert W. Donnelly, Diocesan Administrator, Representative of the Toledo Diocese and St. Joseph Parish, is found not well take and DENIED.

IT IS SO ORDERED.

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Judge J. Ronald Bowman

⁶The Mission Statement of St. Joseph Church is "Together through prayer, aware of Christ's presence in our midst, and nourished by the sacraments, the Word of God and the teachings of His Church, we of St. Joseph strive to be a community of Disciples serving our fellow man to achieve better relations with God and each other." Affidavit of Father Gregory L. Peatee at ¶3.

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