

Appeals court revives megachurch's lawsuit against Montgomery County

by Steve Lash

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A Silver Spring megachurch should have a chance to prove that Montgomery County violated federal law by blocking its bid to relocate to a 119-acre plot in Germantown, an appeals court said Thursday.

The 3-0 decision by the 4th U.S. Circuit Court of Appeals revives Bethel World Outreach Ministries' lawsuit under the Religious Land Use and Institutionalized Persons Act. A federal judge in Greenbelt ruled, in a post-discovery summary judgment motion, that the county's zoning regulations and its rejection of Bethel's water and sewer applications did not impose a "substantial burden" on the religious institution under RLUIPA.

"When a religious organization buys property reasonably expecting to build a church, governmental action impeding the building of the church may impose a substantial burden," Judge Diana G. Motz wrote Thursday for the appellate panel, which sent the case back for trial. "Bethel has at the very least offered evidence raising a question of material fact as to whether it had a reasonable expectation of being able to build a church."

The church's attorney, Roman P. Storzer, said the decision enables Bethel to press ahead with its nine-year fight to build a facility that will accommodate its growing membership.

"You can't have worship at all unless you have a place of worship," said Storzer, of Storzer & Greene PLLC in Washington.

Bethel, a 2,000-member majority black Christian church that serves as the headquarters of a global evangelical effort, bought the acreage near the intersection of Brink and Ridge roads in 2004 after concluding that its 450-seat building on Georgia Avenue was too small to accommodate its average Sunday crowd of 1,500 people.

The church's original idea was to build a 3,000-seat church, but has downsized that to 800 seats in light of the county's stated environmental concerns about development on the farmland, Storzer said.

The 4th Circuit agreed with U.S. District Judge Peter J. Messitte on one point: it affirmed his dismissal of Bethel's constitutional claim, saying the church failed to show that the restrictions were intended to burden Bethel's practices because of its religious teaching.

Michael E. Faden, the county council's attorney, said his office is reviewing the decision.

"We'll discuss it with the council members after we have had a chance to absorb it," Faden added.

Before beginning construction, Bethel sought water and sewage service, which required a change to the county's waste and sewage plan map.

In November 2005, the council denied Bethel's application for the change, citing the potential for environmental damage.

Bethel sought judicial review in the circuit court and the intermediate Court of Special Appeals, losing in both state courts.

The church modified its water and sewer application and reduced the size of its planned facility but was again denied by the county.

In May 2008, the church filed suit in U.S. District Court in Greenbelt.

Messitte granted summary judgment in favor of the county on all claims in September 2011, and the church sought review by the 4th Circuit.

"If Bethel's proffered evidence is believed, a fact finder could certainly conclude that Bethel's current

facilities do not adequately serve its religious purposes, and that the planned 800-seat church would alleviate Bethel's burden," Motz wrote. "Viewing the facts in the light most favorable to Bethel, we must conclude that the district court erred in holding as a matter of law that the county did not impose a substantial burden on Bethel's religious exercise."

All would not be lost for the county if the church proves at trial that it has been unduly burdened by the county's actions.

The county could justify the burden by showing it has used "the least restrictive means of furthering a compelling governmental interest," such as by preserving agricultural land, water quality and open space, the court said.

However, the 4th Circuit added it has not been impressed by the county's initial showing.

"The county has presented no evidence that its interest in preserving the integrity of the rural density transfer zone could not be served by less restrictive means, like a minimum lot-size requirement or an individualized review process," Motz wrote.

MOTZ

WHAT THE COURT HELD

Case:

Bethel World Outreach Ministries v. Montgomery County et. al, 4USCA, No. 11-2176. Reported. Opinion by Motz, J. Argued Dec. 4, 2012. Filed Jan. 31, 2013.

Issue:

Did the trial judge err in dismissing Bethel's Religious Land Use and Institutionalized Persons Act claim because the church had not shown an undue burden by the county as a matter of law?

Holding:

Yes; the church "offered evidence raising a question of material fact" as to whether it was unduly burdened by the county's restrictions.

Counsel:

Roman P. Storzer for appellant; Patricia P. Via for appellees.

RecordFax # 13-0131-60 (20 pages).



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