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Effort to enter religious order's zoning fight nixed

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Two opponents of a religious order's plans to expand its operations waited too long to try to get involved in litigation over the proposed action, a federal judge held.

In a written opinion Monday, U.S. Magistrate Judge Iain D. Johnston denied a motion by Coral Township and Jeffrey R. Purtell to intervene in a lawsuit Fraternite Notre Dame Inc. filed against McHenry County.

Fraternite sued the county after it was denied permission to add a boarding school, nursing home and other structures to the mission it runs in Marengo.

Johnston noted the would-be intervenors did not seek to get officially involved in the case until 2½ years after Fraternite filed the suit and 1½ years after the first of five settlement conferences was held.

In fact, the parties were close to resolving the matter when Coral Township and Purtell's predecessor sought to intervene in order to battle Fraternite's expansion plan, Johnston wrote.

He wrote that was too late.

"The proposed intervenors' decision to sit on the sidelines while this case worked its way through the eve of settlement was unreasonable," he wrote.

Fraternite is a Traditional Catholic order that splintered from the Roman Catholic Church in 1977. The group obtained a special use permit in 2005 to construct several structures — including a chapel, convent, monastery, seminary and bakery — on 65 acres of land it owns in Marengo.

In September 2014, Fraternite petitioned the county's Zoning Board of Appeals to amend the permit to allow it to build structures on an additional 30 acres of land it had acquired.

In addition to the boarding school and nursing home, the structures were to include a gift shop and a barn that would house a commercial kitchen which would serve as a small brewery and winery.

Coral Township, located near Marengo, filed an appearance in the zoning board proceeding and asked that Fraternite's petition be dismissed.

Purtell, who lives next to the site of the proposed expanded operations, attended public hearings before the board and also voiced his opposition to the petition.

The board denied the petition in September 2015.

Three months later, Fraternite filed a suit accusing McHenry County of violating the federal Religious Land Use and Institutionalized Persons Act, the Illinois Religious Freedom Restoration Act and the U.S. Constitution and state constitution.

The five settlement conferences were held beginning in December 2016.

In June 2018, Coral Township and Roger Naylor — who was later replaced by Purtell — filed a motion to intervene in the suit.

In an amended motion filed last month, Coral Township and Purtell maintained they had come to believe by June that McHenry County was no longer adequately representing the interests of the township and the property owners adjacent to Fraternite's mission.

They contended this belief stemmed from communications Naylor had with county board members and the McHenry County State's Attorney's Office beginning in April 2018.

Those communications suggested the county was going to try to settle the case "in a way that undermined the county's Uniform Development Ordinance," Coral Township and Purtell contended in the amended motion.

In July 2018, Johnston struck the motion to intervene after attorneys for the proposed intervenors withdrew from the case.

But Coral Township and Naylor filed a new petition to intervene the following month.

Meanwhile, Fraternite had filed a status report in June 2018 stating the parties had agreed to settle the suit.

Johnston held a settlement conference that month and then suspended the discussions until he ruled on the motion to intervene.

In his opinion Monday, Johnston noted Coral Township and Purtell sought to intervene in Fraternite's suit as of right under Federal Rule of Civil Procedure 24(a). The township and Purtell also sought permissive intervention under Rule 24(b), he wrote.

Under both rules, Johnston wrote, would-be intervenors must satisfy certain requirements, including showing that their request to intervene was timely.

Among the factors to be considered in determining if requests were timely is the length of time the proposed intervenors knew or should have known they had an interest in the case, Johnston wrote.

In *State of Illinois v. City of Chicago*, 912 F.3d 979 (7th Cir. 2019), he wrote, the 7th U.S. Circuit Court of Appeals rejected the argument that timeliness should be based on when the would-be intervenor "first realizes that a party it thought was protecting its interests was not doing so."

Instead, a nonparty must file a motion to intervene as soon as it knows that "its interests *might* be adversely affected by the outcome of the litigation," Johnston wrote, quoting *Heartwood Inc. v. U.S. Forest Service Inc.*, 316 F.3d 694 (7th Cir. 2003).

Other factors to consider when determining if a motion to intervene was timely are the prejudice the delay causes the parties in the case and the prejudice denying the motion would cause the proposed intervenor, Johnston wrote.

Those factors, he wrote, weigh in favor of Fraternite and McHenry County.

"Once parties have invested time and effort into settling a case it would be prejudicial to allow intervention," Johnston wrote, quoting *Ragsdale v. Turnock*, 941 F.2d 501 (7th Cir. 1991).

On the other hand, he wrote, Coral Township and Purtell can express any concerns about a settlement when one is brought before the county board for approval.

The lead attorney for Fraternite is James C. Geoly of Burke, Warren, MacKay & Serritella P.C.

"We're happy that the court has ended the petition for intervention and hope we can now go forward and complete the settlement of the matter with McHenry County," Geoly said.

The lead attorneys for McHenry County are Assistant State's Attorneys George M. Hoffman and Thomas P. Cahill.

The proposed intervenors are represented by Brian A. Gorka and Jason A. Guisinger, both of Klein, Thorpe & Jenkins Ltd.

The attorneys for McHenry County and the proposed intervenors could not be reached for comment.

The case is *Fraternite Notre Dame Inc. v. County of McHenry*, No. 15 C 50312.

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