

FILED

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MICHAEL W. DOBBINS *ew*
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VISION CHURCH; UNITED)
METHODIST,)

Plaintiff,)

v.)

VILLAGE OF LONG GROVE,)

Defendant.)

No. 03 C 5761

JUDGE NORGLÉ

MAGISTRATE JUDGE KEYS

DOCKETED

NOV - 5 2003

**ANSWERING MEMORANDUM OF DEFENDANT IN
OPPOSITION TO PETITION TO INTERVENE**

The Northern Illinois Conference of the United Methodist Church and its Presiding Bishop, C. Joseph Sprague (hereinafter the "Conference") maintain that the Conference is entitled to intervene as a matter of right under Rule 24(a) or, alternatively, that the Conference should be permitted to intervene under Rule 24(b). The Conference has not demonstrated that it satisfies all four elements necessary to intervene as a matter of right, and for obvious reasons, glosses over the one element which is fatal to its claim of intervention as of right – the adequacy and the abilities of Vision Church to represent the interests of the Conference. The Conference should not be permitted to intervene under Rule 24(b) as the Conference will interject new issues that may delay the ultimate disposition in this case.

INTERVENTION AS A MATTER OF RIGHT

In order to intervene as a right, the Conference must satisfy the four elements of Rule 24(a):

"(1) the application must be timely; (2) 'the applicant must claim an interest relating to the property or transaction which is the subject of the action'; (3) 'the applicant must be so situated that the

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disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest'; and (4) 'existing parties must not be adequate representatives of the applicant's interest.'" *Hartwood, Inc. v. U.S. Forest Serv., Inc.*, 316 F.3d 694, 700 (7th Cir. 2003). The failure to satisfy any one of these four factors is sufficient grounds to deny a request to intervene as of right. *See United States v. BDO Seidman*, 337 F.3d 802, 808 (7th Cir. 2003). The Conference has the burden of establishing that all four factors are present. *Id.*

The Conference has failed to carry its burden of showing that Vision Church will not adequately represent the interests of the Conference. Where the interests of the original party and of the intervener are identical – where in other words there is no conflict of interest – adequacy of representation is presumed. *See Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 101 F.3d 503, 508 (7th Cir. 1996). That Vision Church may have additional interests at stake does not make the representation of the intervener's interests inadequate. *Id.* The Conference does not point to any area in which its interests and those of Vision Church conflict or diverge. On this element, and while acknowledging that the Plaintiff's case will be "ably and vigorously presented," the Conference states, in a conclusory fashion, that "the conference occupies the unique status of a trust beneficiary with ecclesiastical enforcement responsibilities" and wishes to proceed through its own counsel. That the Conference may have some additional interests at stake which are interests beyond this litigation does not create any conflict of interest. *See Sokaogon Chippewa Comm. v. Babbitt*, 214 F.3d 941, 946 (7th Cir. 2000) ("not all interests give rise to a right to sue").

It appears that both the Conference and the Plaintiff have the same objectives – to successfully challenge the Village's ordinance on constitutional and statutory grounds with the goal of operating a church. The Conference and Vision Church have no "substantive interests at

variance with” one another. *See Solid Waste Agency*, 101 F.3d at 508. Where an intervening association has the same objective as the plaintiff in eliminating illegal discrimination, the interests of the association are adequately represented. *See United States v. City of Miami*, 278 F.3d 1174 (11th Cir. 2002).

The Conference has also failed to establish that it has the necessary interests at issue in this case. To satisfy the second element, that the Conference possesses an interest related to the subject matter of this action, the Conference “must show that the ‘interest’ asserted is a ‘direct, significant, legally protectable’ one.” *BDO Seidman*, 337 F.3d at 808. While the Conference refers to the property being held in trust and the Conference being a beneficiary of that trust, the Conference would have this court believe that the property is held in trust in the sense commonly understood – a land trust with the Conference being the beneficiary of that land trust. However, an examination of the attachment of the Conference (See Supporting Memorandum of Conference, ¶3 pp. 3-4) shows that a trust in this sense was not established, but rather that at the time of the conveyance, the grantor included a “trust” or restrictive covenant that the property would be used for religious purposes. The interest of the Conference in this action is neither direct nor significant. Simply because it may have some interest which may be adversely affected is insufficient to establish a right to intervene. The interest at issue must be one that is at issue in this litigation and more must be shown than simply that some harm may ultimately and indirectly be sustained by the Conference. *See Sokaogon Chippewa*, 214 F.3d at 946 (it must have “an interest in the transaction that is the subject of the pending lawsuit”).¹

¹ The Seventh Circuit has occasionally noted that where the intervener has Article III standing, it has an adequate interest (*Solid Waste Agency*, 101 F.3d at 507), and the Conference maintains that it has standing under associational principles. (Memorandum at pp. 5-6). However, the Conference seeks not only prospective relief, but damages -- and under such circumstances, where individualized proof is required, associations are denied standing. *See, e.g., Retired Chicago Police Association v. City of Chicago*, 7 F.3d 584, 602-603 (7th Cir. 1993).

The Seventh Circuit has admonished courts “to keep the scope of intervention of right within reasonable bounds.” *Solid Waste Agency*, 101 F.3d at 507. The Conference brings nothing new before this Court, and its interests are adequately represented by the Plaintiff. Accordingly, intervention as of right must be denied.

PERMISSIVE INTERVENTION

Regarding the request of the Conference to be permitted to intervene under Rule 24(b), this Court has a vast deal of discretion in denying the request to intervene. *Reid L. v. Illinois St. Bd. of Ed.*, 289 F.3d 1009, 1020 (7th Cir. 2002) (reversal of a denial “is a very rare bird indeed”). The courts have observed that “substantially the same factors are considered” in determining whether to grant permissive intervention under Rule 24(b)(2) or intervention as of right under Rule 24(a). *In re Bank of New York Derivative Litigation*, 320 F.3d 291, 300 n.5 (2d Cir. 2003). Because the scope of the court’s discretion is very broad, the denial of permissive intervention will be rarely overturned. *Id.*

Therefore, because the factors that must be found to exist for intervention as of right are absent, this Court has even greater latitude to deny intervention under Rule 24(b). What has been said above regarding the existence of a “direct, significant” interest -- the second element under Rule 24(a)(2) -- applies with equal force to the conclusion that there does not exist a common question of law or fact. To whatever extent the interests of the Conference and Vision Church align, the latter will adequately protect the interests of the former.

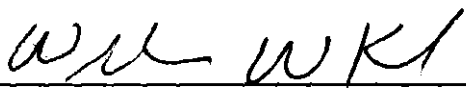
The Village also points out that undue delay would result as the Village's Motion to Dismiss has been fully briefed and a new round of briefing should not be permitted.²

² The Conference also presumably shares with Vision the goal of winning its attorney fees from the Village under statutes providing for fee awards in constitutional and RLUIPA cases. If nothing else, presumably the Conference and Vision seek to expose the Village to the possibility of multiple attorney fee awards, which improves their settlement position. The Court should not allow two sets of lawyers to litigate identical issues.

CONCLUSION

For the foregoing reasons, the Defendant requests that the Petition of the Conference to Intervene as of right or by permission should be denied.

Respectfully submitted by,




WILLIAM W. KURNIK, One of the Attorneys
for Defendant VILLAGE OF LONG GROVE

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys of record herein, hereby certifies that the original of the foregoing **ANSWERING MEMORANDUM OF DEFENDANT IN OPPOSITION TO PETITION TO INTERVENE** was filed with the Clerk of the United States District Court; and a copy thereof was served upon the following, by depositing same in the U.S. mail, first-class postage prepaid this 31st day of October, 2003:

John Mauck, Esq.
Andy Norman, Esq.
Mauck & Baker
One North LaSalle Street
Suite 2001
Chicago, Illinois 60602

Victor P. Filippini, Jr.
Donald Mulack
James T. Mueller
Holland & Knight, LLP
131 South Dearborn Street
30th Floor
Chicago, IL 60603



WILLIAM W. KURNIK
KNIGHT, HOPPE, KURNIK & KNIGHT, L.L.C.
2860 River Road – Suite 400
Des Plaines, Illinois 60018
(847) 298-8000

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