

Tree of Life Christian Schools v. City of Upper Arlington Case Update

I know that many are praying diligently about our situation so I wanted to give an update on the progress of the lawsuit against the City of Upper Arlington.

When the lawsuit was filed, Tree of Life also filed a Motion for Preliminary Injunction. This motion asked the Court to grant Tree of Life legal permission to move the school into the Arlington Centre building and start operations while the federal case was pending.

In order to be successful on the motion, Tree of Life had to prove several factors. The two most important factors were that Tree of Life had a likelihood of success on the merits of its legal claims, and that without an injunction Tree of Life would be irreparably harmed by not being able to use the building while the case was pending. These two factors are called the (1) likelihood of success factor, and (2) the irreparable harm factor.

On the likelihood of success factor, Tree of Life argued that the City's denial of zoning approval for the school violated the Religious Land Use and Institutionalized Persons Act, also known by the acronym RLUIPA. You can find general information about RLUIPA [at this link on ADF's website](#). The RLUIPA argument focused on the fact that the City treated Tree of Life less favorably in its zoning code than it did similar institutions like daycare facilities. Under the zoning code, daycare facilities could have moved right into the Arlington Centre building without having to obtain zoning approval from the City. Tree of Life argued that this unequal treatment violated RLUIPA.

On the irreparable harm factor, Tree of Life argued that by not being able to use the building while the lawsuit was pending, Tree of Life would likely have to turn away students for lack of space next year and would miss ministry opportunities to those students. Therefore, it was important that Tree of Life get into the building in order to minister to as many students as possible.

Tree of Life made many other arguments in its legal briefs, but these two arguments were the basic arguments that formed the foundation of the motion.

On Wednesday, April 27, 2011, Judge Smith entered an Order denying the Motion for a Preliminary Injunction. In the 33 page Order, Judge Smith held that Tree of Life had demonstrated a likelihood of success on the merits of our legal claims. He conducted a very careful legal analysis of Tree of Life's RLUIPA claim and held that Tree of Life would likely prevail on its claim because the City does, in fact, treat Tree of Life differently from other similar uses like daycare facilities. Judge Smith stated, "Based on Plaintiff's arguments and the similarities between a Christian school and a child day care center, Plaintiff will most likely be able to demonstrate that it is treated differently than a similar, secular assembly." After analyzing the legal claim, he concluded, "Based on the aforementioned analysis, it appears that Plaintiff Tree of Life has demonstrated a sufficient likelihood of success on the merits of the RLUIPA claim for purposes of a preliminary injunction."

Judge Smith denied the preliminary injunction under the irreparable harm factor. He did say in his opinion that, "The Court is sympathetic to Plaintiff Tree of Life's situation," but he ultimately decided not to grant the preliminary injunction. He essentially held that because Tree of Life was already operating and could continue operating in its four buildings while the case was pending, an injunction to allow it to get into the building while the case was pending was not appropriate. Judge Smith was reluctant to grant a preliminary injunction because granting the injunction would give Tree of Life all the relief it could possibly get in the case which would not be appropriate at this preliminary stage of the case.

Overall, the Judge's decision is a positive step forward in the case. Judge Smith's decision on the likelihood of success factor was a positive development. There are a couple of things to remember at this stage of the lawsuit. First, we are still at a very preliminary stage of the case and the denial of the preliminary injunction does not spell the end of the case. This was just a denial of preliminary relief. Second, the Judge's decision gives us some real clues in how best to posture this case for a final decision. Finally, even though the Judge's decision means that Tree of Life will not be able to use the Arlington Centre building for a school during the 2011-2012 school year, we continue to have faith and trust that God's timing is best. He brought Tree of Life to this building and miraculously opened the doors for us to buy it. This building is a gift from God to Tree of Life and we continue to trust God for His perfect timing in this case.

Please keep the lawsuit in your prayers. Pray for wisdom for our legal counsel as they move forward in this case, pray for Judge Smith as we submit this case to him, and pray ultimately for God's will to be accomplished at Tree of Life. We will provide more updates in the future as the case progresses.

Thank you for your ongoing intercession before our Lord on behalf of the school.

Todd