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"Group fighting Barnes move looks west for help"

by Jeff Gammage

After getting thumped in Montgomery County Orphans' Court, the people who want to keep the Barnes Foundation's art collection in Lower Merion are looking west for a strategy.

All the way to Montana, in fact.

The Supreme Court of the Big Sky State recently removed the board of a museum for breaching its fiduciary responsibility. The Friends of the Barnes Foundation sees parallels.

It may take that kind of action to keep the Barnes' \$5 billion worth of art from moving to a new exhibition space in Center City. This week, opponents of the move were handed a big defeat when Judge Stanley R. Ott ruled that neither the Friends nor Montgomery County government had the legal standing to ask for a new hearing. Both wanted the judge to reconsider his 2004 opinion that overturned Albert C. Barnes' will and approved the move.

County officials said yesterday that they were unlikely to appeal Ott's refusal. The Friends group, which has spent six years fighting to keep the foundation's Renoirs and Picassos hanging where Barnes left them, are considering one.

"We'll have to meet, talk to our lawyers, and figure out what's next," said Nancy Herman, who serves on the group's steering committee.

She said the group members were "very disappointed" by the ruling: "I think we did expect that Montgomery County, at least, would get standing."

She pointed, though, to the Montana case the Friends see as similar to their own.

Last month, the Montana Supreme Court dismissed the board of the Charles M. Bair Family Museum in Martinsdale, saying the board breached its fiduciary responsibility by closing the museum from 2002 to 2005. The court ordered the creation of a new board.

The case was brought by a community group, Friends of the Bair Museum, and drew intense interest among people who run and regulate charities and foundations, because they often are charged with determining the wishes of long-dead donors.

Barnes died in 1951. The Friends say concerns about the foundation board's fiduciary responsibilities are key. They accuse the board of making the art collection's move its top priority and dismissing alternatives that would preserve the Lower Merion site.

"Those committed to the preservation of the Barnes Foundation's art galleries will not cease in their work to protect it," Friends member Jay Raymond vowed yesterday.

"From my point of view, it's over," said Barnes Foundation president Derek Gillman. "There's no reason for us to do other than as we're doing, to move forward and continue with the architects." A groundbreaking may come in the fall.

The Friends argued in court that Ott had not been told that, in 2002, the state government budgeted \$100 million for a Barnes facility in Philadelphia. At the time, the foundation was saying it was trying to remain in Lower Merion. Montgomery County officials wanted the judge to reopen the case to evaluate a \$50 million offer it made in 2007 to buy the foundation's land and buildings and lease them back.

Ott cited higher court decisions in Pennsylvania that he said required him to deny a hearing on either matter - leaving county Commissioners Chairman James R. Matthews disappointed and frustrated. With no legal standing, the county cannot have its arguments heard.

"I don't think that we as a county have any further action we can take," he said yesterday. "It just shuts us down."

He said that the county's offer of funding remained on the table and that it was a waste for taxpayers and the arts community to have "hundreds of millions of dollars spent to achieve what we already have in Lower Merion."

The Barnes' world-renowned collection is rich with French Impressionist and post-Impressionist paintings, along with Greek antiquities, Chinese painting, and Native American pottery.

The foundation Web site asks the question to which everyone wants an answer:

"Are we moving?"

The response:

"The court has granted permission. . . . No specific date has been set."

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