

Main Line Times

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“Reopening Barnes’ case now up to judge”

by Cheryl Allison

NORRISTOWN – The Barnes Foundation and opponents of its plan to move the priceless art collection from Merion to Philadelphia were back in court Monday for the most substantial hearing in the matter in more than three years.

Montgomery County Orphans Court Judge Stanley R. Ott scheduled the session to hear oral arguments on petitions filed last fall by the Montgomery County government and the group Friends of the Barnes Foundation to reopen his December 2004 decision permitting the move.

They contend that “changed circumstances” make it possible for the financially struggling foundation to keep the art in Merion, as founder Dr. Albert C. Barnes intended. Those new developments include the county’s offer to buy and lease back the Merion property and Barnes’ Chester County farm, Ker-Feal through a \$50 million bond issue and Lower Merion Township’s action to raise limits on visitors.

A Barnes Foundation lawyer questioned the risk, and in the case of the county offer, its possible “illegality,” however, dismissing both measures as “deus ex machine schemes” offering “way too little too late.”

The attorney, Ralph Wellington, Also argued that the “threshold” issue, on which Ott should deny the petitions, is that neither party has standing to intervene.

The entire hearing took a little more than an hour, although, as Wellington pointed out, the petitions have already engendered legal briefs totaling more than 200 pages. Ott asked no questions during the session, only telling the parties at the conclusion that he would “follow my normal procedure” and write an opinion “as expeditiously as possible.”

Representing Montgomery County, Deputy Solicitor Carolyn Tornetta Carluccio told Ott that, not only is the bond offer legal, but that it could, in combination with increased visitation and the new sources of federal and other grant funds that could be attracted if the foundation pursued National Historic Landmark status, provide more than enough fresh revenues to keep the Merion location intact.

“We’re here to tell you there is a financial solution, and [it is] consistent with the donor’s intent. There is no need to spend \$150 million to build a gallery that already exists,” she said.

Representing the Friends, attorney Eric Spade said the issue of the standing of his clients – neighbors and students of the foundation’s art education programs – is “enmeshed” with the merits of the case. Reopening the decision “would allow us to conduct discover” on such issues as how a

\$107 million earmark for a new Barnes museum in Philadelphia got included in a state capital budget in 2002. Information about the earmark was not presented during the court case in 2004.

During the hearing, both Wellington and state Deputy Attorney General Lawrence Barth, whose office is charged with overseeing charitable foundations like the Barnes, said they did not know about the earmark then. Wellington called it a “red herring,” saying that knowing about it would have tended to support the foundation’s request for permission to move, rather than stay in Merion.

Spade, however, said it was “incredible” that no one at the Barnes knew about the earmark, and that it was information that Ott should have been able to consider.

On the county’s \$50 million offer, Wellington pointed out that the government has never made that offer formal. He said, for the Barnes, it is too risky.

“A \$50 million debt obligation dependent on investing successfully, in these unstable times, who can predict that?” he asked. If it were unsuccessful, the Barnes board would have “lost Dr. Barnes’ home and Ker-Feal. It does nothing but expose the Barnes Foundation to financial ruin.”

Offer like the county’s and the township’s “may make good press and good politics, but they would make very bad law,” he told the judge.

The opponents “came here in the 13th hour, asserting pie-in-the-sky schemes that will not withstand scrutiny,” Barth added. Asking Ott to deny their petitions, he said, “The people of Pennsylvania think enough is enough. The Barnes Foundation should be spared the necessity of having to come into court every time an individual or a political subdivision comes up with a ...scheme.”

Carluccio was firm in raising a criticism that even Ott, in 2004, expressed about the Attorney General’s Office’s role in the Barnes matter. If the art is taken to the city, Montgomery County “would lose its most significant cultural asset and one of its most significant historical assets,” she said. It is “a direct conflict for the Attorney General to prefer the citizens of Philadelphia County to the citizens of Montgomery County.”

“We wouldn’t be in court today if we believed the [Barnes] trustees had given an honest review to these proposals,” she said. “Their primary intent,” she asserted, however, “is to move to Philadelphia.”

After the hearing, Lower Merion Commissioner Briand Gordon, who represent Merion and who has worked closely with Carluccio on the case, said “From a legal standpoint, I think the county has a strong case for standing, and an even stronger case that the Barnes can afford to retain the collection in Merion.”

It’s a “greater risk to move” the institution, he believes.

“My great fear,” Gordon said, “is if the Barnes Foundation pursues this course of action, the financial house of cards will collapse and the art will never return to Merion.”

Despite the Barnes' assertions, "It's not too late," Carluccio said. The judge "can make that U-turn."

Yes, a site in Philadelphia has been secured. Yes, the institution has hired architects to design the new building.

But in the broader picture, "Very little has been expended," she said, "and there is much to be saved."