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## “Barnes move’s foes dealt new blow”

by Derrick Nunnally

A Montgomery County judge has thrown out an attempt to stop the Barnes Foundation's \$5 billion art collection from moving to a new Philadelphia exhibition space.

The decision is a major defeat for opponents of the move, who have been fighting in court since 2002 to keep the foundation's dozens of Renoirs, Cézannes and Picassos hanging where Albert C. Barnes left them in Lower Merion Township when he died in 1951.

"It's just what we were looking for," foundation president Derek Gillman said.

In an eight-page decision, Judge Stanley R. Ott found that neither the citizens group Friends of the Barnes Foundation nor the county government had legal standing to ask for a new hearing. Both wanted Ott to reconsider his 2004 opinion overturning Barnes' will and approving the move to Center City.

The failed challenge was two-pronged.

The Friends of the Barnes said Ott had not been told that in 2002, the state budgeted \$100 million for a Barnes facility in Philadelphia. At the time, the foundation was saying in court that it was still trying to remain in Lower Merion. Ott, who called the long-running dispute a "saga," did not offer an opinion on that issue yesterday.

Montgomery County asked to reopen the case so Ott could evaluate a \$50 million offer it had made in 2007 to buy the foundation's land and buildings and lease the property back to the foundation.

Ott found that a pair of state court decisions required him to deny a hearing on either matter. Under a Pennsylvania Supreme Court ruling that rejected a private school alumni group's attempt to challenge school administrators in court, Ott found that the Friends of the Barnes Foundation were not sufficiently affected by the planned move to challenge it in court.

"We conclude that, as many who have gone before, the Friends lack standing because they have no interest beyond that of the general public," Ott wrote.

He tossed out the county's argument by citing a Commonwealth Court opinion that said the state attorney general's right to protect the public interest trumped local government's in some cases.

The Attorney General's Office has appeared in court to defend the move. Ott wrote there was "no authority" for Montgomery County to claim it was protecting the public interest by contesting the move.

Meanwhile, Barnes officials have been moving ahead with their plans. Gillman said a conceptual design for the new facility was almost complete, and the process of estimating costs will start in June.

Meanwhile, opponents of the move are looking at their options. Attorneys for the Friends of the Barnes Foundation and Montgomery County said they had not decided whether to appeal.

"I'll have to sit down with the county commissioners and the chairman, Jim Matthews," Montgomery County deputy solicitor Carolyn Tornetta Carluccio said.

Evelyn Yaari of the Friends of the Barnes Foundation said she might pursue another strategy: arguing that moving the collection would destroy an irreplaceable historic site Barnes created. Her group is seeking National Historic Landmark status for the Lachs Lane site, hoping that would impede the move.

"We have the moral upper hand in the discussion," Yaari said. "There's absolutely no question about that."

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Contact staff writer Derrick Nunnally at 610-313-8212 or [dnunnally@phillynews.com](mailto:dnunnally@phillynews.com).