

# The Main Line Times

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## It's not over yet

*Fight against Barnes move will now go 'to the next level'*

by Cheryl Allison

It may have lasted all of 15 minutes. But in the high-stakes matter of the Barnes Foundation's move from Merion to Philadelphia, what the first court date in three years lacked in substance, it made up for in drama.

Before it was over, Montgomery County Orphan's Court Judge Stanley Ott had chastised the attorney for one party for "grandstanding." However, the critical point for many in the overflow crowd last Friday morning was that the judge moved the case "to the next level."

Hoping to persuade Ott that there are "changed circumstances" since December 2004, when he ruled that the financially-strapped Barnes could alter founder Dr. Albert C. Barnes' will and move the art, Montgomery County and the group Friends of the Barnes Foundation have each filed petitions, asking for a reconsideration.

Ott did not, as Friends attorney Mark Schwartz requested, cut through the legal warm-up and immediately reopen the case.

But neither did he dismiss the petitions, as Barnes attorneys had asked.

Instead, he set a briefing schedule, giving Barnes representatives 30 days to file briefs, and the county and the Friends group 30 days to respond.

In another matter, that action might have been quiet and routine. But with the crowd spilling out into the hall – U.S. Rep. Jim Gerlach, there in a show of support for the fight against the move, never made it into the courtroom – it was anything but.

"I don't know who called in the National Guard," remarked a bemused Ott as he took his seat.

Although the judge said he was inclined, after receiving briefs, to call for oral argument in the case, Schwartz urged him not to wait. "Our position, very simply, is that you were misled" in the lengthy proceedings four years ago, he said.

Schwartz was referring to a number of instances set forth in the petitions, but primarily his clients' and Montgomery County's points that Ott was not informed that, almost two years before

the Barnes Foundation came to court pleading for relief, \$107 million had been earmarked in a state capital budget for a new Barnes Museum in Philadelphia.

“Certain facts were not made available to you. It was a lovely, choreographed performance put on for your benefit,” Schwartz went on, until Ott cut him short.

“This smacks of grandstanding,” Ott said. “This is not the time for argument.”

“Do I look like an idiot to you?” he asked, when Schwartz pushed again for a “ruling to pen the case right now.”

“I don’t act impulsively,” Ott said. “We’re going to do it right.”

Chief Deputy Solicitor Carolyn Carluccio, representing Montgomery County agreed to submit briefs on its positions and did not address the judge further. Attorney Ralph Wellington, representing the Barnes, said it would “Not respond to anything said today.”

His clients, including most of the Barnes’ trustees, and trustee Stephen Harmelin, who is represented by separate counsel, did, however, file preliminary objections to the two petitions last week. Both parties asked Ott, based primarily on issues of standing, to dismiss the petitions. Both ask the judge to order the county and the Friends group to repay their legal costs.

On the matters of standing, both heavily cite the 2006 case of the Milton Hershey School Trust, in which the state Supreme Court ruled that the school’s alumni association lacked “special interest standing” to sue its trustees.

As in that case, neither the Barnes students and neighbors who brought the Friends of the Barnes petition, nor Montgomery County, have standing, they argue, because they would not be aggrieved by the move of the Barnes’ art collection more than the general public.

Attorneys for the Barnes trustees also specifically ask that allegations regarding the \$107 million earmark be stricken from both petitions. Calling the allegations “scurrilous and mislead,” they say that the issue of the funds is irrelevant because the money was never committed to a museum project. Its presence in the capital budget, they say, was more in the nature of an item on a state “wish list.”

The petitions do not address how the \$107 million found its way into that budget in 2002.

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