

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHOLIC HEALTHCARE
INTERNATIONAL, INC. et al.,
Plaintiffs,

Case No. 21-cv-11303
Honorable Shalina D. Kumar
Magistrate Judge David R. Grand

v.

GENOA CHARTER TOWNSHIP
et al.,
Defendants.

**ORDER DENYING IN PART AND GRANTING IN PART PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION (ECF NO. 23)**

I. Introduction

Plaintiff Catholic Healthcare Inc. (CHI) sued Genoa Township, alleging that the Township's denial of CHI's special land use application and its mandated removal of religious symbols and assemblies from CHI's property within the Township violated the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §2000cc *et seq.* (RLUIPA), its First Amendment rights to religious exercise, religious expression, and

expressive association, as well as its Fourteenth Amendment right to equal protection. ECF No. 55.

Before the Court, on remand from the Sixth Circuit, is CHI's motion for temporary restraining order and preliminary injunction to allow the display of religious symbols and permit religious assembly on CHI's property. ECF Nos. 23, 48, 66.

II. Factual and Procedural Background

The relevant factual background was detailed and explained fully in the Court's recent opinion on the defendants' motion to dismiss. ECF No. 69.

To summarize, CHI acquired title to a parcel of undeveloped property located at 3280 Chilson Road in Genoa Township, Michigan (Property) and requested Township approval to construct a grotto/prayer area with associated parking and drive access on the Property. ECF No. 59-2, PageID.2890. In response, the Township informed a CHI representative that the proposed construction would be considered a special land use requiring special land use and site plan approval. *Id.* Despite this instruction from the Township, CHI erected the desired religiously symbolic structures: a Station of the Cross, similar in size and appearance to a birdhouse, and a shrine consisting of an image within a brick wall, referred to as a "grotto,"

on the Property without approval or permits from the Township. ECF No. 55, PageID.2245-48, ¶¶ 45, 51, 55.

CHI ultimately submitted a special land use application for a 6,084 square foot adoration chapel (St. Pio's Chapel) with associated drives and parking areas, as well as "outdoor features, like an outdoor Stations of the Cross walkway, natural nature trail, and outdoor grotto sign." *Id.* at PageID.2255-56, ¶¶ 85, 86; ECF No. 55-2, PageID.2308-09. Although the Planning Commission recommended the Township Board approve CHI's special land use application, it denied the application and the associated impact assessment and site plan, finding that the proposed use of the Property for a 6,090 square foot church with a parking lot, site lighting, building lighting, and outdoor accessory structures to be used for daily gatherings and outdoor special events with an unknown number of visitors was inconsistent with the standards of Township Zoning Ordinances. ECF No. 55-4, PageID.2360-61; ECF No. 55-6, PageID.2388-94.

Defendant Stone, the Township's ordinance enforcement officer, notified CHI that, with the denial of its special land use application, the violating signs and structures on the Property were to be removed. ECF No. 55, PageID.2264, ¶¶ 110, 111. CHI ignored the removal notice and filed the instant action June 2, 2021. ECF No. 1.

The Township filed a state-court enforcement action in September 2021 seeking injunctive relief from CHI's alleged continuing violations of Township Zoning Ordinances related to structures erected without permit (§§ 11.04.01, 21.02.06, and 25.02) and commercial driveway restrictions (§§ 3.05.02(e), 15.02.01, and 15.06.04(a)). ECF No. 55, PageID.2269-71, ¶¶ 131-137; ECF No. 59-9. On September 20, 2021, the state court issued a Temporary Restraining Order immediately requiring CHI to remove the structures erected on the Property until it applied for and obtained all necessary permits and prohibiting the "unlawful use and occupancy of the Property for organized gatherings." ECF No. 55, PageID.2269-71, ¶¶ 131-137. The next day, CHI filed its emergency motion for TRO/preliminary injunction in this action. ECF No. 23. This Court¹ conducted a hearing that day, denied the motion for TRO, and took the motion for preliminary injunction under advisement. ECF No. 28. The Court later denied the motion for preliminary injunction. ECF No. 30. Plaintiffs appealed the denial to the Sixth Circuit. ECF No. 31.

¹ The Honorable Judith E. Levy presided over the hearing and issued the orders denying the TRO and preliminary injunction before this case was reassigned to the undersigned. Text-Only Order dated February 15, 2022.

The parties ultimately entered into a consent order in the state court action under which CHI would submit to the Township² “a special application for land use, site plan, and associated documents to permit the display of religious symbols and the use of [the Property] for religious worship. This submission will include the prayer trails with prayer stations, Stations of the Cross, altar, mural wall . . . and a commercial driveway with parking.” *Id.*

The Planning Commission did not consider CHI’s resubmitted October 2021 application, finding that it did not provide new grounds or substantial new evidence and thus was prohibited under Township Zoning Ordinance § 19.07 until May 3, 2022, one year after the denial of CHI’s original application. ECF No. 55, PageID.2284, ¶169. CHI’s October 2021 special application submitted to the Planning Commission was largely the same as the February 2021 application, as amended, with the exception of the removal of the 6,000 square foot chapel. ECF No. 55-10. It continued to call for thirty-nine parking spaces, prayer trails with prayer stations, Stations of the Cross, alter and mural wall, as well as a bi-monthly Mass in

² CHI reserved all rights, claims, and defenses, specifically the ones asserted in this action, as a part of its agreement to the consent order. ECF No. 55, PageID.2282, ¶ 166.

all but the winter months and bi-annual special events. *Id.* at PageID.2437.

CHI appealed the Planning Commission's decision to the Zoning Board of Appeals (ZBA), which affirmed the Planning Commission's determination that the re-application was not reviewable. *Id.* at PageID.2285, ¶173.

In April 2022, the state court issued a preliminary injunction extending the terms of the TRO and otherwise stayed the matter pending the outcome of the case in this Court. ECF No. 51-3. The Michigan Court of Appeals denied leave to appeal the order granting the Township a preliminary injunction and CHI filed an application for leave to appeal the issuance of the preliminary injunction to the Michigan Supreme Court.

Meanwhile, the Sixth Circuit remanded the motion for TRO/preliminary injunction (ECF No. 23) to this Court to consider whether the coterminous state civil enforcement action is akin to a criminal prosecution such that the *Younger* abstention doctrine should apply. ECF No. 35. The Court of Appeals also instructed the Court to consider whether CHI's claims for injunctive relief are ripe under *Miles Christi Religious Order v. Northville Twp.*, 629 F.3d 533 (6th Cir. 2010) and *Grace Community Church v. Lenox Twp.*, 544 F.3d 609 (6th Cir 2008). The parties submitted supplemental briefing on these issues, as well as on the applicability of the *Rooker-Feldman* doctrine. ECF Nos. 39, 40, 57, 61.

III. Discussion

A. Abstention

The Sixth Circuit remanded this Court's ruling on CHI's motion for TRO/preliminary injunctions to reconsider the application of *Younger* abstention. ECF No. 35. Specifically, the Court of Appeals remanded "for the district court to consider in the first instance whether this case involves a civil-enforcement action that is 'akin to a criminal prosecution' and thus eligible for *Younger* abstention." ECF No. 35, citing *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 79 (2013). Notwithstanding the Court of Appeals' instruction, the Court finds that this inquiry is now moot and that *Younger* abstention does not apply as a result of actions by the state court after the remand. See ECF No. 51-3.

Courts, including at least one in this district, have held that "the *Younger* doctrine is propelled by concerns of federalism and comity which are not present where a state court has stayed its own proceedings pending resolution of the case in federal court." *Jones & Jones Leasing Co., LLC v. Zepssa Industries, Inc.*, 2020 WL 5768842, at *6 (E.D. Mich. Sept. 28, 2020) (citing *Walnut Props. Inc. v. City of Whittier*, 861 F.2d 1102, 1108 (9th Cir. 1988)); *Southwest Air Ambulance, Inc. v. City of Las Cruces*, 268 F.3d 1162, 1178 (10th Cir. 2001). Here the state court stayed its

proceedings pending the outcome of the matter before this Court. ECF No. 51-3. The absence of an ongoing state action, “an essential predicate to *Younger* abstention,” precludes abstention in this matter. See *Jones & Jones*, 2020 WL 5768842, at *6.³

B. Ripeness

The Sixth Circuit remand also requires the Court to reconsider the ripeness issue as it relates to CHI’s motion for preliminary injunctive relief. ECF No. 36. The Court addressed the ripeness issue relative to the prohibition and removal of CHI’s religiously symbolic structures in its recent opinion on defendants’ motion to dismiss. ECF No. 69. The Court adopts the ripeness analysis and holding found at section III.C. of that opinion. *Id.* In summary, the Court determined that the Township Board, which is charged with implementing the Zoning Ordinance, never reached a decision, final or otherwise, regarding the Zoning Ordinance’s application to the installation and erection of CHI’s religiously symbolic structures. *Id.* It

³ The Court ordered the parties to provide supplemental briefing on the applicability of the *Rooker-Feldman* doctrine. TEXT ONLY ORDER 5/5/2022; ECF Nos. 57, 61. Because the federal action was initiated before the state court action, *Rooker-Feldman* was not triggered by the state court’s TRO or preliminary injunction. See *RLR Investments, LLC v. City of Pigeon Forge*, 4 F.4th 380, 387 (6th Cir. 2021) (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005)). The Court is satisfied that the *Rooker-Feldman* doctrine does not apply in this instance.

further held that the delay necessitated by bringing this issue squarely before the Township will not cause undue hardship to plaintiffs because doing so will clarify and narrow the parties' dispute and might provide plaintiffs with the desired permission to install and erect its religious symbols on the Property. See *Miles Christi*, 629 F.3d at 538. Plaintiffs' motion for preliminary injunction, as it relates to the proscription and removal of the religiously symbolic structures, must be denied because these claims are not ripe.

C. Religious Assembly

Plaintiffs seek injunctive relief from the prohibition of organized gatherings on the Property. The prohibition was incorporated in the state court's temporary restraining order, which was ultimately converted into a preliminary injunction. ECF No. 39-2, PageID.1554-55; ECF No. 67-2. The Township and the state court rely upon language in the driveway permit issued to CHI to prohibit "organized gatherings" on the Property. ECF No. 55-8 ("Field driveway is not to be used for organized gatherings."). The Court finds that the constitutionally dubious nature of this restriction need not be analyzed because, by its own terms, the driveway permit expired on January 8, 2022. *Id.* The defendants do not identify, and the Court is not otherwise aware of any other authority for prohibiting gatherings on the

Property. Because the sole source of the gathering restriction is no longer valid, there is no basis for the restriction. Accordingly, plaintiffs satisfy the standard for preliminary injunctive relief from the now-unsupported prohibition of organized gatherings—likelihood of success on the merits, irreparable harm to the plaintiffs, absence of irreparable harm to others, and the public interest. *See City of Pontiac Retired Emps. Assoc. v. Schimmel*, 751 F.3d 427, 430 (6th Cir. 2014).

IV. Conclusion

The Court **GRANTS** plaintiffs' motion for preliminary injunction (ECF No. 23) relative to the organized gathering restriction. The Township may not enforce the prohibition of organized gatherings on the Property pending further rulings from the Court.

The Court **DENIES** the plaintiffs' motion with respect to the installation and erection of religiously symbolic structures because these claims are not ripe.

s/Shalina D. Kumar
Shalina D. Kumar
United States District Judge

Dated: December 20, 2022