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Judge: Using cemetery funds to pay for bankruptcy violates religious rights

Marie Rohde | Jul. 31, 2013

The $57 million that Cardinal Timothy Dolan transferred from the coffers of the Milwaukee archdiocese [1] to a fund for the maintenance of cemeteries is off the table and cannot be used to pay claimants in bankruptcy proceedings, a federal judge in Milwaukee ruled Tuesday.

In a 30-page decision issued Tuesday, U.S. District Judge Rudolph T. Randa reversed a bankruptcy judge's decision that had said the Religious Freedom Restoration Act and the First Amendment right of freedom of religion did not prevent money from a cemetery fund from being included in a pool available to creditors in the bankruptcy proceeding.

Randa reversed that decision, ruling that allowing bankruptcy claimants to appropriate funds from the cemetery trust "would substantially burden the Trustee's free exercise of religion."

Part of the "exercise" of Catholics' belief in the resurrection of the body is "the perpetual care of the Milwaukee Catholic Cemeteries," Randa's ruling states.

"If the Trust is legally compelled to cede all or part of the funds to the estate, there will be no funds or substantially less funds for that perpetual care. As a result, neither the Debtor nor the Trust and its Trustee will be able to fulfill their canonical and moral obligations to provide the appropriate care for these sacred sites -- consistent with Catholic doctrine and canon law -- or assure the requisite permanence, reverence and respect for those buried there," he ruled.

The decision drew a quick response from the Survivors Network of those Abused by Priests (SNAP):

"In a stunning written decision released (Tuesday), Milwaukee Federal Judge Rudolph T. Randa has ruled that Catholic 'canon law,' including beliefs in the 'resurrection of the body' are sufficient basis to shield religious organizations from US civil judicial law."

Peter Isely, SNAP spokesman, said the decision could have far-reaching implications beyond the issue of clergy sexual abuse.

Whether or not the case will have an impact beyond the sex abuse cases, it will have a profound impact on the Milwaukee bankruptcy, Randa acknowledged in his ruling.

Earlier, Jeff Anderson, a lawyer representing many of the claimants, said the transfer of funds was being watched carefully by other dioceses facing bankruptcy. He was not immediately available for comment.

Randa's decision can be appealed to the 7th Circuit Court of Appeals in Chicago.

The Milwaukee archdiocese released the following statement after Tuesday's ruling:

"An important decision on the separation of church and state was issued today by United States District Court Judge Rudolph Randa. Randa ruled that the decades old practice of putting a portion of the money received from cemetery lot and mausoleum sales into trust for the perpetual care of those cemetery sites could not be undone for the benefit of claimants in bankruptcy proceedings."

Randa said while Archbishop Jerome Listecki is the administrator for both the cemetery trust fund and the archdiocese, the trust is legally separate and untouchable by the bankruptcy court.

"If funds are alienated from the Trust without the required canonical approval, the Archbishop as Trustee may well face discipline and a religious penalty from the Church," Randa wrote.

The money had been part of the archdiocese's general funds until 2007, when then-Archbishop Timothy Dolan, now a cardinal in New York, was granted Vatican approval to move the funds after writing, "I foresee an improved protection of these funds from any legal claim and liability."

Dolan later wrote that the shift was made after the finance council recommended the move in order to "preserve and maintain cemeteries as sacred places forever."

That language was picked up by Randa in his decision: "Under Church law, Catholic cemeteries occupy land blessed and consecrated for the specific use of Christian burial. Church law includes canon law, issued or authorized by the Pope, recognized as the Church's supreme legislator."

Randa went on to say that if the bankruptcy ruling were not overturned, Listecki would be forced to choose between obedience to church doctrine and obedience to a civil judicial authority.

Listecki, quoted in the decision, said he never had to make such a choice, and "no religious leader in American society should be compelled to make that choice, which is no choice at all in light of the overriding deference owed one's highest religious authority."

After the Milwaukee archdiocese released thousands of pages of documents [2] July 1, SNAP said Dolan set up the cemetery trust to shield church assets.

"Cardinal Timothy Dolan, when he was in Milwaukee, who was to be the pastor and shepherd of the archdiocese of Milwaukee and especially to victims of childhood sexual abuse, to whom he made to us direct promises that he was going to be truthful, that he was going to bring healing to this archdiocese -- today's documents, especially the letter he wrote to the Vatican, shows he set up a cemetery trust to shield those assets," Isely said at the time.

Isely said the claimants expected a narrower ruling on the question of whether the Religious Freedom Restoration Act applies to the creditors committee. The act requires that any neutral law that substantially burdens religious exercise must be justified by compelling public interest. The creditors argued that the law applied to government entities.

Randa wrote that the claimants, or the creditors committee, were acting "under the color of law" because of the authority granted by the bankruptcy court, therefore essentially a government entity.

[Marie Rohde is a freelance journalist in Milwaukee.]

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