

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Civil Actions No.1340 CD 2002
1449 CD 2002
1418 CD 2002
1417 CD 2002

EVANGEL BAPTIST CHURCH,
Appellants

v.

MIFFLIN BOARD OF ASSESSMENT APPEALS,
Appellees

BRIEF *AMICUS CURIAE* OF THE NATIONAL LEGAL FOUNDATION,
In Support of Appellant.

ON APPEAL FROM THE COURT OF COMMON PLEAS
OF MIFFLIN COUNTY, PENNSYLVANIA

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STATEMENT OF THE INTEREST OF AMICUS CURIAE

The National Legal Foundation (NLF) is a non-profit corporation organized to defend, restore, and preserve constitutional liberties, family rights, and other inalienable freedoms. The NLF and its donors and supporters are concerned with the outcome of this case because of the implications it will have on the taxation of churches and church facilities. The NLF has participated in cases involving the taxation of churches and church facilities.

This Brief is filed pursuant to Pennsylvania Rules of Appellant Procedure 531.

SUMMARY OF THE ARGUMENT

The trial court erred in not granting a tax exemption to the house owned by Evangel Baptist Church (Evangel Baptist). Evangel Baptist's house qualifies for a tax exemption because it is part of an interrelated complex of buildings that has worship as its primary purpose. Evangel Baptist uses the house for worship and to provide incidental hospitality to visiting missionaries. In addition, the house qualifies for a tax exemption based on the same rationale the trial court used to exempt Evangel Baptist's Family Life Center. The house is only used incidentally for visiting missionaries, but is used every week for worship and teaching. Therefore, the house owned by Evangel Baptist Church should be held tax exempt as a place of regularly stated religious worship.

ARGUMENT

The trial court seemed to reject of the party's argument that every activity taking place in Evangel Baptist Church's (Evangel Baptist) house was a form of worship, *Evangel Baptist Church v. Mifflin County Board of Assessment Appeals*, Civ. Action No. 1732 of 2000, at *5 (Ct. Com. Pl. of Mifflin Co., Penn., May 10, 2002). Even assuming, *arguendo*, the court's rejection of the party's argument was correct, the trial court erred when it decided that the house did not qualify for tax-exempt status under 72 Pa.C.S. § 5453.202(a)(1) (2002). The lower court ignored *Grace Evangelical Lutheran Church v. Hannon*, 159 Pa. Commw. 667, 634 A.2d 683 (1993) (affirming the well-reasoned opinion of the lower court's decision that "where the structures are in such close proximity and used in such an interrelated manner," the test should be the "primary purpose" of the entire complex rather than each individual building. *Grace Evangelical Lutheran Church v. Hannon*, 16 Pa. D. & C.4th 559, 563 (1992)). Also, the trial court misinterpreted *Mount Zion New Life Center v. Board of Assessment and Revision of Taxes and Appeals*, 94 Pa. Commw. 439, 503 A.2d 1065 (1985) when it decided that the house was not a place of "regularly stated religious worship." The trial court should have applied the same analysis to the house as it did to the Family Life Center.

I. THE HOUSE OWNED BY EVANGEL BAPTIST CHURCH SHOULD BE EXEMPT FROM PROPERTY TAXES BECAUSE IT IS PART OF AN INTERRELATED COMPLEX OF BUILDINGS WHICH HAS A PRIMARY PURPOSE OF REGULARLY STATED RELIGIOUS WORSHIP

In *Grace Evangelical Lutheran Church*, Grace Evangelical Lutheran Church (the church) had purchased land directly across the street from the property where its main building was located. 16 Pa. D. & C.4th at 561. The church planned to renovate one of the buildings located on the property and eventually use it to house its Vacation Bible School (VBS) Program and adult education classes. *Id.* The church also planned to tear down another building located on the property. *Id.* The court, in determining the outcome of the case, first dealt with the legal consequences of the two buildings being “detached from the building that houses the sanctuary.” *Id.* at 562.

The court quoted this Court’s statement in *Mount Zion*, that ‘Boards of Assessment routinely grant tax exemption to entire church and synagogue buildings because they are primarily used for religious worship, even though they commonly contain kitchens, classrooms and facilities in which other affairs of the religious group are conducted, with a relationship to worship.’ *Mount Zion*, 94 Pa. Commw. at 449, 503 A.2d at 1071. The court then took the reasoning of this Court one step further to its logical conclusion. The court stated,

We see little distinction in granting an exemption to that part of the church building used for classrooms and storage, and granting an

exemption to a separate building used for that same purpose, so long as that building is part of a complex of immediately contiguous property that is used as an entirely integrated facility.

Grace Evangelical, 16 Pa. D. & C.4th at 562.

The court went on to reason that it is only when a building is being used for “purposes which are unconnected to religious activity” that the “primary purpose” of that building needs to be examined separately. *Id.* at 563. Further, the court stated, “where the structures are in such close proximity and used in such an interrelated manner, the question is whether the primary purpose of the entire complex is for religious purposes, not whether each portion of the entire area is used exclusively for religious purposes. To approach the matter any other way would produce ludicrous results.” *Id.* The court went on to say that the buildings, although not presently being used for religious worship, were so interrelated with the worship in the church that its primary purpose was for worship and the property should therefore be tax exempt. *Id.* However, in so doing, the court made it clear that it evaluated the primary purpose of the “*total land area of the complex*” stating it was “reasonably related to the realistic worship needs of the church and its congregation.” *Id.* (emphasis added).

This Court in a two-paragraph opinion affirmed the lower court’s decision. *Grace Evangelical Lutheran Church v. Hannon*, 159 Pa. Commw.

667, 634 A.2d 683 (1993). This Court stated, “that opinion correctly resolves all the issues raised by the Appellant.” *Id.* at 668, 634 A.2d at 683. The test affirmed by this Court in *Grace Evangelical* should be the test applied in to the buildings owned by Evangel Baptist.

Like the buildings in *Grace Evangelical*, the house used by Evangel Baptist is part of a complex used for religious purposes. Rather than evaluate the primary purpose for each building owned by Evangel Baptist, they should be taken as a whole, and if the “primary purpose of the entire complex is for religious purposes,” *Grace Evangelical*, 16 Pa. D. & C.4th at 563, the entire complex having a primary purpose of worship should be tax exempt. The lower court in *Grace Evangelical* recognized that when a building is being used for “purposes which are unconnected to religious activity, we need to examine whether the primary purpose of this separate structure or area is for religious activity. However, the statute does not require that an entire interrelated area be dissected into minute portions with the purpose of each portion being examined to determine if it is exempt.” *Grace Evangelical*, 16 Pa. C. & D.4th at 562-63. Sunday School classes, as well as fellowship meetings, are held in two rooms in the house. (Transcript of Proceedings, at 23.) Just as in *Grace Evangelical*, if these rooms were attached to the church, there would be no doubt they would be exempt.

Evangel Baptist Church, Civ. Action No. 1732 of 2000 at *5 (Ct. Com. Pl. of Mifflin Co., Penn., May 10, 2002) (noting “the Commonwealth Court clearly considered religious teaching sessions in determining which buildings would be tax exempt). If the kitchen were housed within the main building, it would not jeopardize the tax-exempt status of the church building. *Mount Zion*, 94 Pa. Commw. at 449, 503 A.2d at 1071. If the church had two bedrooms in the basement, and a bathroom to accommodate them, the primary purpose of the church would still be worship, regardless of the church’s ability to house visiting missionaries. *Id.* (recognizing that tax exemption has been granted to buildings even though they contain ‘kitchens, classrooms and *facilities in which other affairs of the religious group are conducted, with a relationship to worship.*’) (emphasis added.) The housing of the missionaries would only be incidental to the worship occurring in the church. *See Chevra Achewa Chesed Anshe Cheval v. Philadelphia*, 116 Pa. Super. 101, 176 A. 779 (1934).

In *Chevra*, the court held that the incidental use of a storage room did not mean that a synagogue was not being “exclusively” used for worship because the storage room was necessary to the conduct of the worship. *Id.* at 108, 176 A. at 782. The storage room was used to house ‘old books, old sketches, and damaged scriptures, which are kept there until they are buried

in a grave of a Jewish cemetery, under the provisions of the Jewish law.” *Id.*

The court went on to say,

No part of the building is used for a purpose foreign to religious worship. It is no more reasonable to hold that any part of the building taxable because these old books and scriptures are stored on the third floor, than it would be to hold that a church was taxable because . . . a room was set apart in the church building to . . . store the music for the choir, hymn books, Bibles and books of common prayer or keep extra chairs or seats, when not in use. The law contemplates no such over-literal construction.

Id.

The bedrooms in Evangel Baptist’s house are analogous to the storerooms in *Chevra* and the buildings in *Grace Evangelical*, rather than to a parsonage as the lower court believed. The missionaries do not live in these rooms on a permanent basis like a pastor would in a parsonage. Rather, the church is extending incidental hospitality to the missionaries during the annual missions conference, or other events directly related to teaching and worship hosted by the church. (Transcript, at 26. (Mr. Aurand’s testimony that missionaries were only housed “three or four times a year” during scheduled events for the church)). Like the buildings in *Grace Evangelical*, the house owned by Evangel Baptist is part of an “interrelated area” which has a primary purpose of worship and should therefore fall under the tax-exemption found in 72 Pa.C.S. § 5453.202(a)(1) (2002). The

trial court erred when it failed to consider the post-*Mount Zion* guidance available in this Court's affirmance in *Grace Evangelical*.

II. EVEN WITHOUT THE TEST IN *GRACE EVANGELICAL* THE LOWER COURT ERRED IN NOT GRANTING TAX EXEMPTION TO THE HOUSE OWNED BY EVANGEL BAPTIST BECAUSE ITS PRIMARY PURPOSE IS WORSHIP AND UNDER THE RATIONALE OF MOUNT ZION SHOULD BE EXEMPTED.

Using the same reasoning the lower court used to exempt Evangel Baptist's Family Life Center, the house also qualifies for tax exemption. After finding that the Family Life Center was tax exempt because the "primary purpose of the Center is for AWANA and 'Evangelers' meetings and activities, Sunday School, Bible study, religious gatherings too large for the sanctuary and office space for these religious activities," the court went on to hold that the house did not qualify for tax exemption. *Evangel Baptist Church*, Civ. Action No. 1732 of 2000 at *5 (Ct. Com. Pl. of Mifflin Co., Penn., May 10, 2002). The only rationale the court gave for not exempting the house was because the groups meeting in the house were smaller and *occasionally* met elsewhere. *Id.*

Neither of these considerations takes away from the primary use of the house. First, the very case that the trial court relied on in the rest of its decision stated, "the regularity and constancy of the conduct of worship, *virtually* on a weekly basis, brings the primary application and use of at least

part of the premises clearly within the concept of being a place of regularly stated religious worship.” *Mount Zion*, 94 Pa. Commw. at 445-46, 503 A.2d at 1069. In *Mount Zion* the court did not exclude the building merely because the worship did not take place every single week, but rather it pointed out that in the case of *Laymen’s Weekend Retreat League of Philadelphia v. Butler*, 83 Pa. Superior Ct. 1 (1924),

deemphasized the mere existence of an established schedule as the controlling criteria for regularly stated worship. Instead, the court focused on the intent of individuals to join together in worship, with the worshipers’ establishment of a schedule being a manifestation of that intent

94 Pa. Commw. at 445, 503 A.2d at 1069. The fact that the men’s fellowship takes place elsewhere, on occasion for the purpose of having a “change of pace” (Transcript, at 23) is therefore not legally significant in this instance. The intent of the worshipers is to join together once a month to fellowship and worship in the house. *Id.* The men’s fellowship meeting is normally scheduled in the house, *id.* at 51, manifesting their intent to worship.

Second, instead of giving a reasonable explanation as to why the size of the group should matter, the court seemed use the fact that the building in question was a house as some sort of “trump card.” *Evangel Baptist Church*, Civil Action No. 1732 of 2000 at *5 (Ct. Com. Pl. of Mifflin Co., Penn.,

May 10, 2002). The court cited *Mount Zion*, stating that that court came to the same conclusion regarding the manor house at issue in that case. *Id.* However, the trial court ignored one key fact. The manor house at issue in *Mount Zion* was actually being used for a permanent residence of the administrator of the Center. *Mount Zion*, 94 Pa. Commw. at 447, 503 A.2d at 1070. Although the living room was used for worship and teaching, because a family lived there on a full time basis, the Center could not show that the primary purpose of that family's living room was for worship. *Id.* at 450, 503 A.2d at 1071.

However, in stark contrast to the manor house at issue in *Mount Zion*, *no one* resides in the house on a permanent basis. *Evangel Baptist Church*, Civil Action No. 1732 of 2000 at *5 (Ct. Com. Pl. of Mifflin Co., Penn., May 10, 2002) (stating “[t]he house is not the day-to-day residence for Evangel Baptist’s minister or any other church official.”). As pointed out earlier, the house is actually only used to accommodate missionaries three or four times a year. (Transcript, at 26.) Whereas, the house is used on a *regular basis* for worship, *i.e.*, every week for Sunday School and at least eight months out of the year for the men’s fellowship meetings. (Transcript, at 23.) As the Supreme Court of Pennsylvania pointed out in *Mullen v. Commissioners of Erie County*, 85 Pa. 288, 292 (1877), “it is the use, not the

building, which defines the exemption.” The trial court seemed to deny tax exemption to Evangel Baptist’s house merely because *it is a house*, rather than grant it an exemption for the regularly stated worship that occurs there.

CONCLUSION

For the foregoing reasons the decision of the Court of Common Pleas of Mifflin County, Pennsylvania not to award tax exempt status to the building at issue should be reversed.

Respectfully Submitted,

This 30th day of August 2002

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CERTIFICATE OF SERVICE

I hereby certify that I have duly served the attached Brief Amicus Curiae of the National Legal Foundation in the above captioned case, upon the person and in the manner indicated below, by placing two copies of the same in the United States mail, first class postage, prepaid on August 30, 2002.

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