

FILED

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
FRANKLIN COUNTY, ILLINOIS

AUG 30 2005

THREE ANGELS BROADCASTING
NETWORK, INC.,

Plaintiff,

vs.

DEPARTMENT OF REVENUE OF THE
STATE OF ILLINOIS,

Defendant,

And

THOMPSONVILLE COMMUNITY HIGH
SCHOOL DISTRICT NO. 112 and
THOMPSONVILLE SCHOOL DISTRICT
NO. 62, and FRANKLIN COUNTY BOARD
OF REVIEW

Interveners.

James J. O'Connell
FRANKLIN COUNTY
CIRCUIT CLERK

Case No.: No. 2004-MR-0015

**THREE ANGELS BROADCASTING
NETWORK'S REPLY TO APPELLEES'
OPPOSITION TO ITS APPEAL BRIEF**

Introduction

Appellant Three Angels Broadcasting Network, Inc. hereby replies to the three opposition briefs filed by Appellees in this case. In seventy-seven pages of briefing, the opposition has raised numerous points and issues, many of which are peripheral or unrelated to the central issues of this case. Three Angels will limit its response to three main points:

First, that despite their multiplicity of points in contention, the opposition recognizes that the most important and central issue in this case is whether the subject properties are used for religious purposes. Further, the opposition recognizes that the judge made inappropriate rulings and remarks relating to Three Angels' religious purposes in dealing with this central question. But the opposition themselves are inconsistent in asserting whether television broadcasting can ever be a religious activity.

Second, the Appellees also recognize the importance of the factors set down in the *Inter-Varsity* case. They badly misread, however, the record in applying that standard to this case in relation to Three Angels' corporate structure, scope of its missionary activities, and the relevance of its revenue and assets.

Third, there are a number of issues peripheral to this case, such as board makeup, and royalty payments, that Appellees try to make far too much of on a far too limited record. Indeed, the hearing officer's findings on these points are supported by essentially no evidence, and should be reversed. Nothing Appellees raise should prevent this Court from reversing the ruling below and granting Three Angels a property tax exemption.

I. The central question in the case is whether the programming and activities carried out by Three Angels at the subject property are religious in nature.

A. The Board of Review acknowledges that the hearing officer made inappropriate rulings regarding the religious nature of Three Angels' programming, but dismisses these rulings as dicta, which they are not.

Appellee Board of Review recognizes that the hearing officer made inappropriate comments and rulings regarding the religious nature of Three Angels' programming, and is thus forced, in defending the decision, to describe these as "dicta." This tactic occurs in the context of all the Appellees agreeing on one thing: the central issue in this case is whether the subject "property was used primarily for religious purposes." (School Districts Brief, p. 13, hereafter "SD #"); *See*, (Board of Review Brief, p. 2, 16-17, hereafter "BR#"); (Department of Revenue Brief, p. 12, 14, hereafter "DR #"). The question, of course, is whether Three Angels' activities and programming meet the standard of religious use and purpose.

Some of the opposition wants to begin and end the discussion of religious purpose with the case of *The People v. Deutsche Gemeinde*, which talks in terms of "worship, Sunday schools and religious instruction."¹ DR 12; SD 14. But the more informed Appellees recognize that this dated case is merely a starting point, and that these uses are "not inclusive" but rather "illustrative of the nature of religious use." BR 19.

The point the Board of Review attempts to obscure is that the hearing officer inappropriately ruled that Three Angels programming was *not* religious. The Board is perfectly correct in saying that it is "improper to evaluate the propriety of religious beliefs." BR 24. But the Board erroneously claims that the hearing officer's decision was not "based on the content of the programming or publications." *Id.* In a footnote, the Board attempts to "clarify" this obvious misstatement by suggesting that the hearing officer's comments about Three Angels' programming being "lifestyle" and "not a religion" was "simply dicta." BR 24.

Why is this merely dicta? The hearing officer did not say it was dicta. She was not writing hypothetically or in the alternative or giving a separate basis for her decision. This is a very important point, because by the Board of Review's own standards, if this statement by the hearing officer was not dicta, then her ruling was legally improper and should be reversed.

Because this claim of "dicta" is so important, the broader context of the hearing officer's statement must be quoted: "Applicant is advocating a way of life, but it is a lifestyle that applicant favors, not a religion. Leasing or otherwise using property to promote a lifestyle and to market merchandise does not qualify as a use of property for primarily religious purposes." Notice of Decision, p. 31-32.

¹ 249 Ill.132, 136-37 (1911).

The officer's statement goes to the central issue in the case, is the activity religious. She ruled that the programming involved was not religious, but was a "lifestyle," and thus the property was not used "for primarily religious purposes." Far from being dicta, this question of the content of the programming and whether it was religious becomes the central point in the case. Thus, by Appellee's own standards, the hearing officer's ruling was inappropriate, unlawful, and should be reversed.

b. Appellees claim that a television broadcaster can never qualify as a religious ministry. This shows the double standard at work in denying Three Angels' discovery on other broadcasting ministries in Illinois.

According to the Board of Review, the hearing officer's decision below stands for the proposition that "television broadcasting was not a religious activity in and of itself, *regardless of the content of the broadcasts.*" BR 1. Indeed, so certain is the Board of Review that religious content cannot turn television broadcasting into a religious activity that it accepts and asserts that Three Angels programming "content was religious." BR 24. It concludes, however, "the content does not make the act of publishing or television broadcasting a religious activity." BR 24.

While we agree with the Board that Three Angels' programming content is religious, the hearing officer below did not do so. She did not, at least in part, because to have done so would reveal the double standard that the Board of Review has walked into. That is, that there are other religious broadcasters in Illinois who are treated as religious ministries. To assert the rule, as the Board of Review does, that Three Angels cannot get a religious exemption because no television broadcasters can qualify for one, no matter what the content, merely demonstrates the unequal application of the law, in violation of equal protection and laws against religious discrimination.

The Board of Review should well be aware of this inconsistency, as they later assert that Three Angels should not be allowed to discover and submit evidence relating to other Illinois religious broadcasters. They allege that as each year and each case is unique, "it makes no difference if another television broadcaster received a property tax exemption." BR 37.

The rule being asserted against Three Angels is that "no television broadcaster" can receive an exemption, regardless of content. The Board argues that broadcasting is an inherently "commercial" activity, like baking, or farming, or paper-making, that can never be considered 'religious.' One could argue with this list of "secular" activities, as there are no doubt monastery vineyards, church cafeterias, and perhaps even religious publishing-house paper mills that qualify as 'religious.'

But one need not agree with these points to accept that it is indeed highly relevant, for constitutional purposes, whether other *Illinois religious broadcasters* receive an exemption. Three Angels has the right to assert this claim, and should be given the opportunity for discovery and record-making on this point, should this Court choose not to directly reverse the decision below.²

II. The Opposition also largely accept the applicability of *Inter-Varsity* factors, but misapply those factors.

As Appellees recognize, the case of *Inter-Varsity Christian Fellowship v. Hollman*,³ is important in assessing this case. Both the briefs of the Board of Review and the School Districts spend significant space analyzing and applying the five prongs of the test from

² The Board's contention that Three Angels has not provided the legal basis for their constitutional claims (BR 37) completely misses the point that Three Angels is requesting further fact-gathering on this issue, as it has been denied basic discovery on this issue. Once Three Angels has developed the facts, it will be in a position to flesh out its legal arguments on this point. In the meantime, it is sufficient, as was done in the appeal brief, to reference the equal protection and religious clauses of the Illinois State and federal constitutions which forbid disparate treatment of similarly situated religious organizations.

³ 62 Ill.App.3d 798 (2nd Dist. 1978).

this case. BR 32-35; SD 21-23. They err, however, in dealing with at least three issues under this test: First, they erroneously claim that the corporate structure of Three Angels disqualifies it from receiving a religious exemption; second, they ignore the scope of missionary activity associated with Three Angels; and third, they misconstrue the significance of Three Angels' revenue and assets.

A. Both religious corporations AND not-for-profit corporations can qualify for the religious property tax exemption.

The School Districts argue that because Three Angels has not organized under the Illinois Religious Corporations Act that it cannot qualify for the religious property tax exemption. SD 12-13. This is plainly wrong. A review of the Religious Corporations Act at 805 ILCS 110 shows that it is a very narrow Act, intended only for churches and groups involved in religious *worship* that have attached congregations. Many religious organizations do not fit in this narrow category; yet still have a religious purpose.

This is demonstrated by the *Inter-Varsity Christian Fellowship, Evangelical Teachers Training Assoc.*, and the *Congregation Sunday School* cases, as none of the plaintiffs in these cases were houses of worship. In the first two cases mentioned, the applicants were described generally as "not-for-profit corporation[s]," and no mention is made of the religious organizations statute.⁴ The applicant in the latter case also could not qualify under the Religious Corporations Act, as the Illinois Supreme Court long ago said that the Act was only for church congregations and houses of worship, and not other types of religious organizations. *Hamsher v. Hamsher*, 23 N.E. 23 (Ill. 1890).

The property-tax-exemption statute is written more broadly than the Religious Corporations Act, however, and is not limited to property used merely for "religious

⁴ 62 Ill.App.3d at 801; 118 Ill. App. 3d 21, 22.

worship," but uses the broader phrase religious purposes. The School Districts are caught up in a technical form of organization that is not required by Illinois law. The only requirement is that Three Angels be a not-for-profit corporation, which it is, and that it has a charter setting out exclusively religious and charitable purposes, which it does.

B. The scope of Three Angels' missionary activity, domestic and international, is overlooked and misstated.

Another factor, which Appellees badly misstate, is the type and amount of missionary work, the third *Inter-Varsity* factor, carried out by Three Angels. In a rather remarkable instance of internal contradiction and misstatement, the School Districts say that "Three Angels does not conduct any religious teaching, apart from its broadcasting or the travels of Danny and Linda Shelton, whose primary focus is fundraising." SD 33.

But consider that Three Angels broadcasting consists of 24-hours a day, seven-days a week religious programming, the majority (75 to 80%) of which it produced. TT 84-87; Record Below 1720. Combine that with the fact that Danny and Linda's travels were more than half the weekends of the year, to preach, pray and sing gospel songs at formal worship services around the country, with no evidence of primary or even significant fundraising efforts at these events. TT 130-132.

Then consider the Board of Review's statement again. It is essentially saying, to paraphrase meaningfully, that "Three Angels does not conduct any religious teaching, *except for its 24-hour a day, 7-day a week, religious broadcasting, and its every-other week-end, day-long, church-based, worship services.*" And this does not even take into account the overseas missionary trips by Three Angels teams, the thousands of baptisms in India and Russia, the permanent ministry teams in Russia and the Philippines, or the mutual agreement that Three Angels and the Seventh-day Adventist church have to

cooperate on missionary efforts around the world and the activities that flow from that agreement. TT 133-135, 136, 97.

Three Angels exceeds the level of missionary activity carried out by the entity at issue in the *Inter-Varsity* case, as the entity there was the literature division, which was located in Downers Grove, Illinois. That division did not itself carry out field missionary work, but rather prepared "numerous religious publications."⁵ In contrast, Three Angels itself, using the buildings at issue in this case, directly carries out missionary work, as well as supporting a wide ring of missionaries and missionary work.

C. Defendants' arguments would penalize large and financially successful religious organizations.

The fourth *Inter-Varsity* factor is the issue of sales, revenue and assets. Appellees all claim that the magnitude of Three Angels' revenue and/or assets disqualifies it from being a religious ministry. SD 16; B R 34-35; DR 4-5, 14. But this is to misread *Inter-Varsity* and the record below. Appellees' argument would mean that all religious ministries must remain small and insignificant in size and finances to qualify for tax exemption. The penalty for growth and success is, according to their logic, loss of tax-exempt status.

Appellees are fond of talking about Three Angels \$42 million in accumulated assets, as though this princely sum was sitting in a bank account or investment properties. The truth is much less spectacular. It takes significant operational assets to run an international media ministry. About \$12 million is the portion that relates to buildings, land, equipment, uplinks, etc., that is dedicated to the day-to-day functioning of the

⁵ *Id.* 804.

ministry. (These figures are drawn from Applicant's Exh. 15, the audited financials for 2001.)

Another large sum, about \$24 or \$25 million, represents the amount held in trust for donors, either in revocable trusts or gift annuities. In other words, this money is NOT Three Angels' at the present, and only a small portion of it will ever become Three Angels'. Some of the trusts will be revoked. Some represent only a partial gift to Three Angels, of possibly as little as 25%. The gift annuities have to stay funded so they can be paid out to the donors.

Of the remaining six million, about \$2.8 million is in investments, mostly money from "charitably related unit trust agreements . . . and they cannot be used until the donor dies." TT 491. The other half, about 3.3 million is current assets, but there were also about 2.5 million in current liabilities. Exh. 15, p. 3 So when it comes down to it, there was only about \$800,000 that was actually available for use at the end of 2001. This represented an emergency reserve of about one month's operational costs. This is actually a dangerously thin reserve, and cannot be remotely characterized, in any fair way, as an inappropriate accumulation of capital.

Inter-Varsity is concerned with "substantial profits flowing into a *capital surplus*."⁶ A capital surplus is an amount that increases the stock value of a company. It is equivalent to pure profit, which is set-aside for the shareholders or some future purpose.

What Three Angels has accumulated is more akin to retained earnings, where the net revenue from a year is put back into the company to further expand its religious and missionary activities. The net revenue over the years has been placed back into items that

⁶ *Id.* 804.

are used on a daily basis to carry out religious programming and broadcasting. There is no meaningful capital surplus, only a small amount in reserve, sufficient only to cover a single month's operating expenses. Appeal Brief p. 42.

The Appellees are similarly confused on the issue of revenue. They argue that it is unclear whether Three Angels' net revenue comes from donations or from the sale of ministry related CDs, videos, etc. It is not clear why the distinction matters, as there is no legal distinction between net revenue either from donations, or sale items, or both. Rather, the important question is, what is done with that net revenue.

Yet the School Districts find it significant that "up to 25 percent of 3ABN's total \$14 million of annual revenues is derived from activities other than charitable donations." SD 23. Well, that means that about 75% of its revenues comes from charitable donations. And this figure is significantly higher than in *Inter-Varsity*, where only 55% of the revenues came from charitable donations.⁷

Indeed, an acid test to answer the question of whether items were sold at a profit would be to deduct donations from the income line, and see whether the income of goods and services sold would exceed expenses. Well, it would not. If this were done for 2000 and 2001, Three Angels would move from net revenue of 1.2 and 1.9 million respectively, to a net loss of around 9.6 and 9.1 million for those same periods. (Applicant's Exhs. 14 and 15).

Clearly, Three Angels relies almost entirely on the free will, charitable donations of those who are blessed by and believe in its religious ministry and outreach. To characterize its modest sales of ministry items as the primary, commercial purpose of the

⁷ *Id.* at 803.

organization would be to have a very small tail wag the quite large dog. Such a distorted view is not required by *Inter-Varsity* or other Illinois law.

III. The Opponents focus on a number of items that are peripheral to the main issues and are not supported by the record.

Appellees would like to pull a number of issues from the periphery, or beyond, of the case and make them THE central issue. The Board of Review spends about one half of its factual section talking about Three Angels' board make-up and oversight, when this was never an issue in dispute either prior to or at the hearing. Further, never has so much been made of such a small amount of money, that of a \$20 alleged "royalty" payment, which is the only evidence cited of personal inurement. Even if these issues were factually as appellees claim, they would not disqualify Three Angels from tax exemption. But the facts do not support Appellees' construction, and they certainly should not be barriers to tax exemption.

For both of these points, it is important to remember that, while the hearing officer can weight credibility, that she cannot lawfully make findings of fact for which there is no evidentiary support. "The taxing authorities must decide the question from a consideration of the facts stated, and not from the conclusion of any person"⁸ The court may not choose to ignore and disregard certain factual evidence, when there has been submitted no evidence to the contrary.

A. The identity and make-up of the board of directors was not disputed at trial, and there is no evidence to support the judge's findings of inadequate board oversight.

The perplexing issue regarding the question of board make-up is that this issue was never raised or disputed prior to or at the hearing of this matter. It was first raised by

⁸ *The People v. Deuthsche Gemeinde*, 249 Ill. 132, 136, 94 N.E. 162 (1911).

the hearing officer in her opinion almost a year after the trial. None of the case law suggests that a necessary burden of proof in a tax-exemption case is to name the board members.

What is required is proof of organization and operation as a not-for-profit entity. This was demonstrated by the entry of appropriate articles and bylaws, and testimony regarding the board's regular meetings and general oversight role. It was testified that the board meets three or four times a year, and that it governed and oversaw the finances and operations of Three Angels. Trial Transcript 94-96. The board chairman testified as to the board meetings and policies regarding travel and compensation, including for the years in question. Trial Transcript 500-501. There was no evidence given to the contrary on these points, and there was no sense, either before or at the hearing, that the board's make-up and independence were in dispute.

Had it been understood that board make-up was a disputed point, Three Angels would have certainly submitted a full list of board member names and descriptions, and could have called other board members to testify. As it was, four board members testified, three of them from the period in question, and nine board members were identified in total, either by name or position. All but one was identified, either explicitly or implicitly, as serving during the 2000 and 2001 period in question. TT 92-93.

It would be remarkable to take a point over which there had been no dispute, and little attention paid to, and elevate it to be the determining factor in the case. If this Court believes that the issue of board make-up is of crucial importance, the appropriate response would be to remand for further findings of fact on this point. To honor a finding of fact that said there were only four, related board members, when the only available

evidence on the point for the time in question said there were twelve board members with no evidence of family relations between all but two for the time in question, would be plain error.

It would be a travesty of justice to have this case turn on a finding of fact which is so plainly wrong as that the board only consists of four Sheltons. The truth is the board consisted of two Sheltons and ten other independent persons during the period at issue. This court should either reverse the hearing officer's finding of fact on this point, or, remand the case for further factual findings regarding board make-up and oversight.

When an appeals court is presented with an issue where there has been an insufficient factual development, it should remand the case for further findings on that question. See *Grundy County Agricultural District Fair v. Dept. of Revenue*, 346 Ill.App.3d 1075, 1080, 806 N.E.2d 695, 699, 282 Ill.Dec. 398, 402, (Ill.App. 3 Dist.,2004). ("the record is insufficient to permit us to make accurate findings... thus, we must remand to the department to determine the factual bases of these issues."); *Bd. of Educ. Minooka Comm. v. Ingels*, 75 Ill.App.3d 334, 337, 31 Ill.Dec. 153, 156 (Ill.App. 3 Dist., 1979) ("Because the record is inadequate in this regard, the circuit court should have remanded this cause to the hearing officer so that he might reconsider his decision . . ."); *Columbia Quarry Co. v. Dep't. of Revenue*, 34 Ill.2d 46, 47, 213 N.E.2d 497,497 (Ill. 1966) ("We have carefully examined the record but find ourselves unable to resolve the issues presented without further findings of fact. We therefore vacate the judgment and remand the cause to the Department of Revenue with directions to conduct an additional hearing, make appropriate findings, and, if necessary, redetermine the plaintiff's claim for [tax] credit.").

B. No evidence exists of any private inurement of Three Angels' revenue, whether in the form of royalty or other payment.

The Appellees continue the fiction; either directly or through strong implication, that Linda Shelton received royalty payments from Three Angels for the sale or playing of her CDs. SD 16,22; BR 12; DR 3. There is no support to be found for this in the record. However, even if this were true, this should not disqualify Three Angels tax exemption. There is nothing that prevents an artist from receiving a commercially reasonable royalty, even if their product is produced and sold by a not-for-profit organization, as reasonable compensation for services rendered can be paid by not-for-profit organizations. The only evidence of an amount of any royalty is \$20, which is less than trivial given Three Angels' revenue and assets. TT 619.

But the important point is this: *no royalty ever came from Three Angels, but from a private company, completely unconnected with Three Angels, known as BMI.* TT 619.

Thus, the royalty issue, which should not even be an issue if Mrs. Shelton did get some minor royalty from Three Angels, is even less of an issue, because the royalty actually comes from another source entirely that has no connection with Three Angels. Employees of not-for-profit corporations are not slaves or indentured servants, forbidden from selling their artistic or literary properties to outside organizations. Yet Appellees would argue that any royalty from any source to a Three Angels employee somehow strips the entire organization of its tax-exempt status. There is nothing in Illinois case law or statutes that would compel, or even suggest, such a result.

The fact that Appellees are so aggressive and insistent on attacking this alleged "royalty" shows the complete absence of any real evidence they have showing private inurement. This is the strongest evidence they have on that point, so they have to make

the most of it. Unfortunately for them, this evidence shows no such thing, and merely reveals the weakness of their case on this point.

Conclusion

For the reasons stated above, this Court should find that Three Angels is indeed a religious ministry, that it uses the subject property for religious purposes, and that it should be granted a property tax exemption. In the alternative, this Court should remand the case for further findings of fact on the issue of Three Angel's board membership and oversight role, to take the testimony of the previously excluded witnesses Dr. Denis Fortin and Elder Ted Wilson, and to allow discovery on the existence of other religious broadcast ministries in Illinois that enjoy tax exemption.

Dated this 30th day of August, 2005

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope

☒ in a U.S. Post Office Mail Box ☐ by hand delivery
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