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A federal judge has swept away claims of religious discrimination by plaintiffs including Catholic Social Services of the Philadelphia Archdiocese and ruled the church agency must provide home assessments for same-sex couples wishing to provide foster care for at-risk children in Philadelphia.

The Catholic agency's leadership testified in U.S. District Court in Philadelphia that doing so would amount to church approval of LGBT relationships.

Catholic teaching emphasizes respect and compassion for LGBT persons but opposes homosexual acts as contrary to God's plan for human sexuality, which is reserved only for marriage between one man and one woman.

In a ruling late July 13, Judge Petrese Tucker denied a temporary restraining order that CSS had sought to resume referrals of foster children from the city's Department of Human Services. DHS had frozen intake of new foster cases with CSS last May, no longer referring some of the 6,000 city children in need of care to CSS-affiliated foster parents.

Three of those foster mothers, Sharonell Fulton, Cecilia Paul and Toni Lynn Simms-Busch, had joined CSS in a federal lawsuit claiming religious discrimination by the city against the Catholic agency.

Tucker in her 64-page decision ruled that the plaintiffs failed to present evidence of such discrimination, and that the contract requiring CSS to work with same-sex households under the city's fair practices ordinance was binding.

Over three days of testimony in late June, witnesses for CSS and DHS officials explained how 30 state-approved foster care agencies, including CSS and the nonprofit Bethany Christian Services, are required to perform "home studies," or assessments to certify the suitability of prospective foster parents.

James Amato, Philadelphia archdiocesan secretary of Catholic Human Services and head of CSS, testified that his agency's long-standing practice was essentially to sidestep the issue of a Catholic agency potentially certifying a home led by a same-sex couple by passing on the task on to one of 28 other secular foster care agencies in Philadelphia.

DHS suspended that practice for CSS in May and ceased referring new cases to it. Although the Catholic agency attempted to negotiate an exemption to continue referring home-study assessments for same-sex households to other secular agencies, DHS refused and demanded adherence to the city's fair practices ordinance requiring CSS to perform the assessments for all prospective foster parents, regardless of their relationships.

Unable to place any of the children through CSS, the agency led the lawsuit to seek relief from the courts.

Representing the plaintiffs were lawyers from the Becket Fund, a Washington-based nonprofit that specializes in cases concerning religious freedom.

"Foster children deserve loving homes, and foster parents like (Sharonell) Fulton and (Cecilia) Paul have been waiting with open arms to welcome them," said Lori Windham, senior counsel at Becket. "But the city has put politics above the children, and today the court allowed the city's discriminatory actions to continue — a decision we will immediately appeal."

During the evidentiary hearing June 18-21, Becket lawyers emphasized the high quality of care provided by Catholic foster parents and the support they receive from CSS, in accordance with its mission to offer optimum care for all children in need.

The lawyers pointed to past public comments by Mayor Jim Kenney, himself a Catholic, that they characterized as hostile to the Philadelphia Archdiocese.

Plaintiffs' counsel charged that by denying CSS an exemption according to past practice, DHS was targeting CSS "purely based on its religious beliefs" in violation of the U.S. Constitution's First Amendment and Pennsylvania's Religious Freedom Act.

Despite the arguments, Tucker cited numerous legal precedents and dismantled each of the claims of discrimination.

Saying the plaintiffs "rely too heavily" on four comments by Kenney "to draw a sweeping conclusion that CSS has suffered impermissible hostility at the hands of the mayor," Tucker added there was no evidence that he targeted CSS, and at any rate, his comments "are irrelevant to this case and cannot support plaintiffs' claim of religious hostility and intentional targeting."

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Tucker also wrote that the assertion by CSS that the city denied its exemption for home-study assessments of same-sex households as a sign of religious discrimination had no merit. The referrals to other agencies "amount to CSS's refusal to serve that same-sex couple," a violation of the contract, in the judge's view.

Because the city froze intake for referrals to CSS and for Bethany Christian Services, Tucker cited this as evidence DHS showed no targeting of the agencies based on religious beliefs and practices, since Bethany is not an agency of the Archdiocese of Philadelphia as CSS is. She wrote that no evidence supported the plaintiffs' claim to a violation of the establishment clause of the First Amendment of the Constitution.

She also dismissed the claim to a violation of Pennsylvania's religious freedom law. Presuming that providing foster care constitutes a fundamental religious exercise by the Catholic agency under the law, Tucker ruled that the CSS ministry is not "substantially burdened" because it "is not the case" that CSS, if it were to certify a same-sex couple, would be extending "its religious approval of same-sex

relationships in contravention of Catholic teaching about marriage."

Arguing that certifying a divorced Catholic person "would not suggest that CSS approved of divorce as a religious matter," Tucker ruled that CSS "was hired to provide a scope of services to the citizens of Philadelphia that is narrower than CSS contends." The contract only requires CSS to "certify prospective foster parents as meeting state guidelines for foster care."

For those reasons, Tucker ruled that certifying same-sex couples "does not constitute a substantial burden on CSS's religious exercise of providing foster care to children."

CSS has given no indication it will at any time perform home studies for same-sex couples, but Bethany Christian Services has agreed to do so under terms of the contract with DHS.

While the case now heads to the federal appellate courts, CSS' foster care program appears in jeopardy if it does not comply with the ruling to certify same-sex foster parents.

As it has done for more than 100 years, CSS continues providing foster care to about 127 children a day with more than 100 families in Philadelphia. That care is supported with $3.8 million annually from CSS with its own private funds in addition to $1.7 million annually in per diem payments from DHS.

But without new referrals from the city, CSS foster care services will likely close "within a matter of months" with layoffs of 15 staff persons beginning perhaps as early as mid-July, Amato said in his testimony.

In recent years similar Catholic agencies in Boston, San Francisco, the District of Columbia and Illinois have stopped providing adoption or foster care services rather than violate church teaching and place children with same-sex or unmarried heterosexual couples.

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Gambino is director and general manager of CatholicPhilly.com, the news website of the Archdiocese of Philadelphia.

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