

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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HENKE-CLARSON FUNERAL SERVICE, LLC,  
HENKE-CLARSON FUNERAL HOME, CASSANDRA  
M. CLARSON and ROGER J. HENKE,

Plaintiffs,

v.

ORDER

06-C-050-S

CELIA M. JACKSON, STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING,  
WILLIE E. GARRETTE, STATE OF WISCONSIN  
FUNERAL DIRECTORS EXAMINING BOARD,  
J.C. FRAZIER, BONNIE GIFT, MICHELLE M.  
MOORE, ROSALIE A. MURPHY, DAVID E. OLSEN  
and CONNIE C. RYAN,

Defendants.

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Plaintiffs' motion for preliminary injunction and preliminary pre-trial conference came on to be heard before the Court in the above entitled matter on March 8, 2006, the plaintiffs having appeared by Nowlan & Mouat by David Moore; defendants by Peggy A. Lautenschlager, Attorney General, by Corey F. Finkelmeyer, Assistant Attorney General. Honorable John C. Shabaz, District Judge, presided.

After hearing arguments of the parties the Court determines that the Younger abstention doctrine applies to the action, See Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971) because the three-part test established in Middlesex County Ethics Comm. v. Garden State Bar Ass'n., 457 U.S. 423, 102 S.Ct. 2515, 73

L.Ed.2d 116 (1982) is met and there are no exceptional circumstances present which would justify an exception to the Younger abstention doctrine.

First, the state proceedings constitute an ongoing state judicial proceeding. "From the very beginning a disciplinary proceeding is judicial in nature, initiated by filing a complaint with an ethics committee." Id. at 433, 102 S.Ct. at 2522 (citations omitted). While the action in Middlesex County Ethics Comm. involved attorney discipline, the present action involves a formal complaint filed by the Department of Regulation and Licensing against plaintiffs Clarson, Henke, and the Henke-Clarson Funeral Home as an entity in which plaintiffs Clarson and Henke each face a possible suspension of their respective licenses. Accordingly, the administrative proceedings are judicial in nature. Further, the proceedings are ongoing as evidenced by the fact that the ALJ set the matter for a status conference on March 20, 2006.

Second, the proceedings implicate important state interests. States have an extremely important interest in maintaining and assuring the professional conduct of the people they license, See Id. at 434, 102 S.Ct. at 2522, which in Wisconsin includes funeral directors. Additionally, the State's interest in the litigation is demonstrated by the fact that the Department of Regulation and Licensing as well as the State of Wisconsin Funeral Directors Examining Board which are agencies of the State are named as parties in the present action. See Id. at 434-435, 102 S.Ct. at 2522.

Third, there is an adequate opportunity in the state proceedings to raise constitutional challenges. Even if plaintiffs' constitutional claims cannot be resolved at the agency level, if an administrative decision is issued which adversely affects their substantial interests, they will have the opportunity for judicial review at the conclusion of the hearing process pursuant to Wis. Stat. § 227.52. Accordingly, they have an adequate opportunity to raise constitutional challenges in the state proceeding because judicial review of the administrative proceeding is available and they can raise their constitutional challenges in the state court forum. See Ohio Civil Rights Comm'n. v. Dayton Christian Schools, Inc., 477 U.S. 619, 629, 106 S.Ct. 2718, 2724, 91 L.Ed.2d 512 (1986).

Accordingly, because the three-part test established in Middlesex County Ethics Comm. is met and there is no evidence of bad faith, harassment, or other exceptional circumstances the Younger abstention doctrine applies and the Court dismisses plaintiffs' complaint without prejudice.

ORDER

IT IS ORDERED that plaintiff's complaint is DISMISSED without prejudice to the parties.

Entered this 8th day of March, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge