UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SECOND BAPTIST CHURCH,	§	No. 5:20–CV–29–DAE
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
CITY OF SAN ANTONIO,	§	
	§	
Defendant.	§	
_____	§	

ORDER GRANTING MOTION FOR LEAVE TO INTERVENE

Before the Court is Proposed Defendant-Intervenors' Motion for Leave to Intervene. (Dkt. # 21.) Pursuant to Local Rule CV-7(h) the Court finds this matter suitable for disposition without a hearing. After careful consideration of the memoranda in support of and in opposition to the motion, the Court, for the reasons that follow, **GRANTING** the motion for leave to intervene. (Dkt. # 21.)

BACKGROUND

On February 24, 2020, the Court denied Plaintiff Second Baptist Church's ("the Church") motion for preliminary injunction. (Dkt. # 25.) The Church asked the Court to preliminarily enjoin Defendant the City of San Antonio ("the City") from imposing its zoning regulations in a manner that would bar the Church from using its community center in accordance with its sincerely held religious beliefs to serve children who need temporary housing and care. (Id.) The

Church had filed suit against the City alleging claims for violations of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc(a), cc(b)(1) ("RLUIPA"), as well as violations of the Texas Religious Freedom Act, Tex. Civ. Prac. & Rem. Code § 110.003 et seq. ("TRFA"), the Fair Housing Act, 42 U.S.C. § 3601 et seq. ("FHA"), and the Texas Fair Housing Act, Tex. Prop. Code §§ 301.001–.171. (Dkt. # 1.) Despite denial of the preliminary injunction, the Church still seeks to lease its community center to VisionQuest, a for-profit youth services organization that operates shelters for homeless or migrant youth, for use as a shelter for unaccompanied migrant boys. (Dkt. # 34.)

Just prior to the Court's hearing on the Church's motion for preliminary injunction, on February 18, 2020, Proposed Defendant-Intervenors Lettye Watson and Renee Watson ("the Watsons") filed a motion for leave to intervene in this case. (Dkt. # 21.) On February 25, 2020, the Church filed a response in opposition to the motion. (Dkt. # 28.) On March 3, 2020, the Watsons filed a reply. (Dkt. # 31.) The City is not opposed to the motion to intervene. (Dkt. # 34.)

LEGAL STANDARD

Federal Rule of Civil Procedure 24(a) permits a party to seek intervention as of right while Rule 24(b) allows for permissive intervention. Fed. R. Civ. P. 24. "Although the movant bears the burden of establishing its right to

intervene, Rule 24 is to be liberally construed." Texas v. United States, 805 F.3d 653, 656 (5th Cir. 2015) (quoting Edwards v. City of Houston, 78 F.3d 983, 995 (5th Cir. 1996)). "Federal courts should allow intervention where no one would be hurt and greater justice could be attained." Sierra Club v. Espy, 18 F.3d 1202, 1205 (5th Cr. 1994) (internal quotation marks omitted).

A court may grant a plaintiff-intervenor's motion to intervene as of right if the intervenor satisfies a four-prong test:

> (1) the application . . . must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Texas, 805 F.3d at 657 (quoting New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co., 732 F.2d 452, 463 (5th Cir. 1984)).

A district court has complete discretion on whether to allow permissive intervention even if there is a common question of law or fact, or the requirements of Rule 24(b) are satisfied. In Re Greyhound Secs. Litig., 1997 U.S. Dist. LEXIS 23051, at *7-9 (N. D Tex. Aug. 15, 1997). When deciding whether to permit intervention, the court should consider whether intervention will unduly delay the proceedings or prejudice existing parties. Fed. R. Civ. P. 24(b).

DISCUSSION

The Watsons are long-time residents[1] of the Coliseum/Willowpark neighborhood where the Church is located. (Dkt. # 21.) In fact, according to the Watsons, their home is less than half of a mile away from the Church. (Id. at 2.) The Watsons oppose the Church's rezoning request because of the negative effects they believe the proposed immigrant shelter would have on their property and neighborhood. (Id. at 3.) They move the Court for leave to intervene in order to protect their interests in the value of their home and to protect their neighborhood. (Id.) The Watsons contend they are entitled to intervention as of right under Rule 24(a)(2) or, in the alternative, for permissive intervention under Rule 24(b). (Id.)

Opposing intervention, the Church argues that Renee Watson seeks to use her position as a Bexar County official[2] "to make inflammatory and bigoted comments about the Church." (Dkt. # 28 at 1.) The Church contends that Ms. Watson seeks only to intervene in this case to promote her political agenda. (Id.)

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[1] Renee Watson is the daughter of Lettye Watson. (Dkt. # 21 at 1.) The Watsons live together; Lettye Watson has a living trust in the residence and Renee Watson is the beneficiary of the living trust. (Id.)

[2] The Watsons, in response, state that Renee Watson is only an employee, but not an official, of Bexar County. (Dkt. # 31 at 4 n.3.) Ms. Watson's biography page reveals she is the Director of Small Business & Entrepreneurship for Bexar County. See https://www.bexar.org/DocumentCenter/View/22439/Bio-Renee-Watson-2019. There is no indication that she is an "official" for either the City or Bexar County.

The Church maintains that the Watsons should not be permitted to intervene because their interests are adequately protected by the City. (Id. at 2.)

I. Intervention as a Matter of Right

The Court first considers whether the Watsons are entitled to intervention as a matter of right.

A. Timeliness

Intervention must be sought in a "timely" fashion, whether intervention is sought as a matter of right or permissively. "There are several factors that are relevant to the determination whether an application to intervene is timely, including: (1) the length of time the proposed intervenor knew or should have known of its interest in the case, (2) the extent of the prejudice that existing parties may suffer by the proposed intervenor's delay in moving to intervene, (3) the extent of the prejudice that the would-be intervenor would suffer if intervention is denied, and (4) any unusual circumstances that bear upon the timeliness of the application." Stallworth v. Monsanto, 558 F.2d 257, 264–66 (5th Cir. 1977); Save Our Springs Alliance Inc. v. Babbitt, 115 F.3d 346, 347 (5th Cir. 1997) (same); United States v. Covington County Sch. Dist., 499 F.3d 464, 465–66 (5th Cir. 2007) (same).

The instant action was commenced on January 10, 2020, when the Church filed its complaint and motion for preliminary injunction against the City.

(Dkts. ## 1, 3.) The City's response to the motion was filed on January 30, 2020, but, according to the Watsons, the response focused only on the City's interest in protecting its zoning ordinance and did not focus on the property interests of the residents in the Church's neighborhood. (Dkt. # 21 at 4.) Therefore, according to the Watsons, they learned only in late January that their interest in preserving their property value and the character of their neighborhood was not included in the City's briefing on the preliminary injunction. (Id. at 4–5.) The Watsons maintain that they timely moved to intervene within three weeks of this determination. (Id. at 5.) They also argue they would be prejudiced if denied intervention because they will be unable to participate in the case to protect their interests. (Id.)

In response, the Church asserts that the Watson's motion to intervene is not timely because Renee Watson has been a vocal political opponent of the Church's religious exercise to operate the shelter before the instant suit was ever filed by the City. (Dkt. # 28 at 4.) The Church contends that Ms. Watson has made inflammatory comments and protests against the Church since October 2019. As evidence, the Church attaches a San Antonio Express News article dated October 4, 2019, which includes a picture of Renee Watson speaking in opposition against the migrant shelter. (Dkt. # 28-1.) Given this, in addition to the local media attention this lawsuit generated prior to its commencement, the Church maintains that the Watsons knew or should have known of the lawsuit before it

was filed on January 10, 2020. (Dkt. # 28 at 4.) The Church further argues that the Watsons strategically waited to file their motion to intervene on the day oral argument was scheduled on the Church's motion for preliminary injunction in an attempt to surprise the Church. (Id.) The Church asserts there is no legal prejudice to the Watsons if their motion to intervene is denied. (Id.)

Despite the Church's argument that Renee Watson was aware of the Church's zoning dispute with the City prior to the Church actually filing the instant suit, the Court must consider the Watsons' contention that they did not learn until late January that their interest in preserving their property and character of their neighborhood was not included in the City's briefing on the motion for preliminary injunction. Indeed, the first element of timeliness focuses on when the intervenor "became aware that its interests would no longer be protected by the original parties," not "the date on which the would-be intervenor became aware of the pendency of the action." Sierra Club v. Espy, 18 F.3d 1202, 1206 (5th Cir. 1994) (citing Stallworth, 558 F.2d 257, 264 (5th Cir. 1977)).

The City did not file its response to the Church's motion for preliminary injunction until January 30, 2020 (Dkt. # 17), and it did not file its answer until January 31, 2020 (Dkt. # 18). Given this, the Court finds that the Watsons timely moved to intervene in this case less than three weeks later on February 18, 2020, after the Watsons contend they first learned the City's briefing

did not sufficiently represent their interests. (Dkt. # 21.) At the time the motion to intervene was filed, the case was still at an early stage; additionally, no party has filed a motion to reconsider the Court's order denying the Church's motion for preliminary injunction. Thus, based upon the brief time that had elapsed between the filing of this case and the motion for intervention, the remoteness of prejudice to the existing parties resulting from this delay, and the likelihood of prejudice to the Wilsons if intervention were denied, the Court concludes that the motion to intervene was timely.

B. Interest in the Subject of the Action

The second element for assessing a motion to intervene as of right considers whether the interest asserted by the Watsons is related to this lawsuit. This interest must be "direct, substantial, [and] legally protectable." Piambino v. Bailey, 610 F.2d 1306, 1321 (5th Cir.) (citations omitted), cert. denied, 449 U.S. 1011 (1980). This requires a showing of something more than a mere economic interest; rather, the interest must be "one which the substantive law recognizes as belonging to or being owned by the applicant." Ross v. Marshall, 426 F.3d 745, 757 (5th Cir. 2005) (citation omitted). In addition, "the intervenor should be the real party in interest regarding his claim." Id. Despite these requirements, the Fifth Circuit has observed that "the interest 'test' is primarily a practical guide to

disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." Id.

According to the Watsons, as homeowners and members of the Coliseum/Willow Park neighborhood, they have a protectable interest in maintaining the neighborhood's character, and thus an interest in participating in this litigation, and therefore they must be allowed to intervene in order to preserve their property value and the quality of life they enjoy in their neighborhood. (Dkt. # 21 at 5.) The Watsons maintain their intervention is important because the Church seeks to rezone the area surrounding its property from an Arts and Entertainment zone to a commercial zone, which would have detrimental effects on the character of the neighborhood. (Id.) For instance, according to the Watsons, the proposed shelter would need adequate fencing or some other barrier to keep children inside the property when they are outdoors. (Id. at 6.) The Watsons contend that this barrier would interfere with their enjoyment of Carver Library, a public library located adjacent to the Church. (Id.) Additionally, the Church would need over one-hundred additional parking spaces to accommodate the shelter, but the Watsons assert that the Church cannot supply these spaces and thus parking would have to occur up and down the neighborhood streets. (Id.) Among others, the Watsons contend the neighborhood streets would be become more dangerous as a result of the increased traffic to the area. (Id.)

In response, the Church argues that the Watsons' claimed interest in this case is speculative. (Dkt. # 28 at 5.) The Church asserts that the Watsons have failed to present any evidence that the proposed shelter would negatively impact their property value located half of a mile away from the Church. (Id.) The Church maintains that its proposed immigrant shelter would have no affect on any of the Watsons' speculative interests. (Id.)

The Fifth Circuit has recognized that a property interest is "the most elementary type of right that Rule 24(a) is designed to protect," Diaz v. S. Drilling Corp., 427 F.2d 1118, 1124 (5th Cir. 1970), because it is concrete, specific to the person possessing the right, and legally protectable. Texas v. United States, 805 F.3d 653, 658 (5th Cir. 2015); see 6 James W. Moore, et al., Moore's Federal Practice § § 24.03[2][a] ("Moore's") (3d ed. 2008) ("Motions to intervene in which the proposed intervenor advances a clear property interest present the easiest cases for intervention."). Indeed, this lawsuit will establish the validity or invalidity of the City's zoning for the Church and surrounding neighborhood, which necessarily bears directly on the property interests the Watsons seek to preserve. See Planned Parenthood of Minn., Inc. v. Citizens for Cmty. Action, 558 F.2d 861, 869 (8th Cir. 1977). Accordingly, the Court finds that the Watsons have a significantly protectable interest in the subject matter of this litigation.

C. Ability to Protect Interest

The next question is whether the Watsons are so situated that the disposition of the action will impair or impede their ability to protect their interest if they are not allowed to intervene. The Church fails to address any opposition to this question in its briefing. (See Dkt. # 28.) Upon consideration, the Court finds the Watsons have a stake in this litigation because their property values and the use of their property and neighborhood will be directly and/or indirectly affected by the operation of the proposed shelter. These interests are substantially affected by the outcome of this litigation and the Watsons are thus subject to impairment by the disposition of this case.

D. Adequate Representation

The next issue is whether the Watsons' interests are adequately represented by the City. The burden of establishing inadequate representation is on the party seeking intervention. Edwards, 78 F.3d at 1005. This burden, however, is "minimal," and a potential intervenor "need only show that 'representation by the existing parties may be inadequate.'" Ross, 426 F.3d at 761 (quoting Heaton v. Monogram Credit Card Bank of Ga., 297 F.3d 416, 425 (5th Cir. 2002)). The applicant "need not show that the representation by existing parties will be, for certain, inadequate." Moore's § 24.03[4][a][i]. Instead, "the Rule is satisfied if the

applicant shows that the representation of his interest 'may be' inadequate." Trbovich v. United Mine Workers of America, 404 U.S. 528, 538 n.10 (1972).

Although the Fifth Circuit has characterized the intervenor's burden as "minimal," Edwards, 78 F.3d at 1005, "it cannot be treated as so minimal as to write the requirement completely out of the rule." Cajun Elec. Power Co–op., Inc. v. Gulf States Utilities, Inc., 940 F.2d 117, 120 (5th Cir. 1991) (internal quotation marks omitted); see Veasey v. Perry, 577 F. App'x 261, 263 (5th Cir. 2014) ("[T]his requirement must have some teeth."). Accordingly, Fifth Circuit "jurisprudence has created two presumptions of adequate representation" that intervenors must overcome in appropriate cases. Edwards, 78 F.3d at 1005. One presumption arises when "the would-be intervenor has the same ultimate objective as a party to the lawsuit." Id. Another presumption arises "when the putative representative is a governmental body or officer charged by law with representing the interests of the [intervenor]." Id. If the "same ultimate objective" presumption applies, "the applicant for intervention must show adversity of interest, collusion, or nonfeasance on the part of the existing party to overcome the presumption." Id. Similarly, if the government-representative presumption applies, the intervenor must show "that its interest is in fact different from that of the [governmental entity] and that the interest will not be represented by [it]." Id. (alterations in original) (internal quotation marks omitted); Texas, 805 F.3d at 661–62.

The Watsons contend their interests cannot be adequately protected by the City. They assert that their protected interests in avoiding the direct and negative effects on their property and their neighborhood from the proposed shelter differ from those of the City, which seeks to maintain its interest in enforcing the City Development Code, the Zoning Commission's decision, and its police powers. (Dkt. # 21 at 9.) In response, the Church counters that the Watsons' interests are protected by the City because they have identical objectives—both desire to see the Church's case dismissed and the shelter stopped. (Dkt. # 28 at 7.)

Upon consideration of the parties' arguments, the Court finds the Church's view too simplistic. The City's interests are broader than merely seeking dismissal of the Church's lawsuit and prohibiting the shelter's operation. Indeed, the City's interests in enforcing its zoning laws and upholding the decision of the Zoning Commission go well beyond the City's interest in simple dismissal of this lawsuit. Furthermore, the Watsons' interests in the lawsuit are different from the City's interests—the Watsons' interest in protecting their property and the character of the neighborhood are personal and do not belong to the general public as would be the City's interest.

Nevertheless, what is less clear is whether the Watsons' interests and the City's interests diverge in a manner that is germane to the case. Assuming one or both above-discussed presumptions apply in this case, in order to show adversity

of interest, an intervenor must demonstrate that its interests diverge from the putative representative's interests in a manner germane to the case. Texas, 805 F.3d at 663. In Texas, the district court found inadequate representation because the federal government had taken stances that were directly adverse to the Jane Does seeking to intervene. Id. at 663. In that case, the federal government took the position that the states could refuse to issue driver's licenses to deferred action recipients. Id. The Jane Does wished "to remain in their long-time home state of Texas, to retain custody of their U.S. citizen children, and to obtain work authorization, driver's licenses, and lawful employment so that they can provide for their families." Id. Thus, the two goals were contradictory to each other and provided the basis for intervention as a matter of right.

Here, unlike the parties in Texas, the Watsons appear to share the same ultimate objective as the City—namely, preservation of the neighborhood's zoning laws. Should the City prevail in this suit, the status quo would be maintained—the zoning for the Coliseum/Willow Park neighborhood in which the Church is located and the Watsons reside would remain the same. This, in effect, would maintain the City's current zoning which prohibits operation of the proposed shelter and, at the same time, preserve the Watson's property value and neighborhood. And, as of this date, the City has taken no action inconsistent with

the Watsons' objective to preserve the property value and character of their neighborhood.

Nevertheless, the Court must consider that the City's briefing and answer to the Church's complaint fails to properly address or discuss the personal property interests of the Watsons or their neighbors. Given this, the Court finds that there is at least a chance that representation of the Watsons' interest 'may be' inadequate." Trbovich v. United Mine Workers of America, 404 U.S. 528, 538 n.10 (1972). The Court thus finds that the Watsons have rebutted the presumption of adequate representation. Having demonstrated all four factors for intervention as of right under Rule 24(a), the Court will grant the Watsons' motion to intervene.

II. Permissive Intervention

Even if the Watsons had failed to demonstrate intervention as of right under Rule 24(a), the Court would still allow the Watsons to permissively intervene. Permissive intervention under Rule 24(b) permits the Court to use its discretion to grant intervention where the application is timely; there is a common question of law or fact; and there will be no undue delay or prejudice to the original parties. Kneeland v. Nat'l Collegiate Athletic Ass'n, 806 F.2d 1285, 1289 (5th Cir. 1987); In re Enron Corp. Sec., Derivative & "ERISA" Litig., 229 F.R.D. 126, 131 (S.D. Tex. 2005). The Fifth Circuit has also instructed that "[f]ederal courts should allow intervention where no one would be hurt and the greater justice

could be obtained." Texas, 805 F.3d at 657 (citing Sierra Club, 18 F.2d at 1205). In acting on a request for permissive intervention, "it is proper to consider, among other things, 'whether the intervenors' interests are adequately represented by other parties' and whether they "will significantly contribute to full development of the underlying factual issues in the suit." New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co., 732 F.2d 452, 472 (5th Cir. 1984) (quoting Spangler v. Pasadena City Bd. of Ed., 552 F.2d 1326, 1329 (9th Cir. 1977)). Ultimately, permissive intervention "is wholly discretionary with the court . . . even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied." 7C Wright & Miller, § 1913.

Here, in considering the first element of permissive intervention, the Court has already determined the motion is timely. Additionally, as discussed, the Watsons share a common question of law or fact in this case. And, when examining the final requirement under Rule 24(b)(3), the Court finds that granting intervention here will not delay or prejudice the adjudication of the original parties' rights. Fed. R. Civ. P. 24(b)(3). The Watsons represent that they intend to make additional arguments and contribute to the furtherance of the original suit, including a motion to dismiss (see Dkt. # 21 at 10). Accordingly, the Court in its broad discretion, grants the motion for permissive intervention.

CONCLUSION

Based on the foregoing, the Court **GRANTS** Proposed Defendant-Intervenors' Motion for Leave to Intervene. (Dkt. # 21.)

IT IS SO ORDERED.

DATED: San Antonio, Texas, April 17, 2020.

David Alan Ezra
Senior United States District Judge