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# Recent Developments: First English Evangelical Church of Glendale v. County of Los Angeles: Tile Evolution of the Just Compensation Clause-Court Requires Monetary Compensation for Temporary Regulatory Taking of Property

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this long standing law to this case, the dissent found that the warrant specified that only McWebb's apartment could be searched. Therefore, the search of Garrison's apartment was warrantless and because the state did not advance any exceptions to the warrant requirement, all evidence seized from the search should have been suppressed.

In addition, the dissent found the majority's analysis concerning the reasonableness of the way in which the warrant was executed to be unpersuasive. Because multiple-occupancy buildings are now common, the conduct of the officers could hardly be deemed reasonable. The dissent found any reasonable basis for the search to be lacking because the police failed to thoroughly investigate the premises before obtaining the warrant; failed to question Garrison prior to beginning the search as to the location of his residence, and failed to take into account the obvious lay-out of the third floor which revealed two separate apartments. As viewed by the dissent, these facts, would have enabled a reasonable officer to realize the factual mistake before any contraband was seized.

*Garrison*, provides another example of the Supreme Court's willingness to broaden the good-faith exception to the warrant requirement. Although case-by-case analysis can only determine if the good-faith exception to the warrant requirement has been fulfilled, if *Garrison* is the benchmark by which good-faith is measured then it seems clear that in most cases good-faith will be found.

— Amy Kushner

*First English Evangelical Church of Glendale v. County of Los Angeles:*  
THE EVOLUTION OF THE JUST  
COMPENSATION CLAUSE—  
COURT REQUIRES MONETARY  
COMPENSATION FOR  
TEMPORARY REGULATORY  
TAKING OF PROPERTY

Marred by a history of incomplete clarification, the issue of whether a landowner is entitled to compensation for a temporary regulatory taking of property pursuant to the Just Compensation Clause of the fifth amendment of the United States Constitution has finally been settled in *First English Evangelical Church of Glendale v. County of Los Angeles*, 107 S.Ct. 2378 (1987), (*First English*). Historically, the remedy for a taking of property by inverse condemnation was invalidation of the unconstitutional regulation, but the United States Supreme Court in *First English* has authoritatively held in a 6-3

decision that monetary relief is an acceptable remedy.

The First English Evangelical Church of Glendale owned and operated a camp (Lutherglen) for handicapped children in Angles Natural Forest. In February of 1978 a storm flooded the watershed. The massive infusion of water forced the Mill Creek, which ran through Lutherglen, to overflow its banks. Consequently, the property was inundated, the buildings were destroyed and the camp was rendered useless unless rebuilt.

Subsequently, in response to an everpresent hazardous flood condition posed by an earlier topographic change in the Mill Creek Canyon, Los Angeles County adopted an ordinance, which read in part, "[a] person shall not construct, reconstruct, place or enlarge any building or structure, any portion of which is, or will be, located within the outer boundary lines of the interim flood protection area located in Mill Creek Canyon." *Id.* at 2381-2382, citing Los Angeles, Ca., Interim Ordinance No. 11,855 (Jan. 1979) (emphasis added). The law adversely affected the Church's interest in Lutherglen, prohibiting its reconstruction.

In response to the regulation the Church filed suit in the Superior Court of California alleging that the law denied the church of all use of the property. Following *Agins v. Tiburon*, 24 Cal. 3d 266 (1979), the court denied relief by inverse condemnation. *Agins* stands for the proposition that maintenance of a suit for damages in inverse condemnation cases is the equivalent of coercing the state to exercise its eminent domain powers. Thus the only relief, in California, when a regulation was found a denial of a substantial amount of property rights would have been declaratory relief or mandamus. See, *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922).

On appeal, the California Court of Appeals affirmed the lower court decision on similar grounds and, "because the United States Supreme Court has not yet ruled on the question of whether a state may constitutionally limit the remedy for a taking to nonmonetary relief." 107 S.Ct. 2383. The Church appealed to the United States Supreme Court. 478 U.S. \_\_\_, 106 S.Ct. 3292 (1986). In prior cases seeking to address the issue, the Court had refused to settle the matter because in those appeals the Court had deemed each case as "not ripe" or "lacking finality." See, *MacDonald, Sommers and Frates v. Yolo County* 106 S.Ct. 2561 (1986) (A lack of a final determination by a county planning board as to how to apply a regulation prevents a decision of whether a taking has occurred.), *Williamson County Regional Plan*

*Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985) (Petitioners failure to exhaust all state remedies to resolve a situation, [i.e. application for a zoning variance, following state administrative procedures to collect compensation before filing suit,] renders the case as pending therefore precluding a decision by the Court for a lack of finality at the state level.), *San Diego Gas and Elec. v. San Diego*, 450 U.S. 621 (1981) (When a state court decision is not final, the Court cannot review the case pursuant to 28 U.S.C. § 1257.), *Agins v. Tiburon*, 477 U.S. 255 (1980).

Despite the fact that the ordinance had yet to be deemed unconstitutional as a taking of property without providing just compensation, the Court did address the compensation issue. See generally, 107 S.Ct. at 2389-2390 (Where the dissenting opinion refuses to agree with the majority opinion because of the "lack of finality" issue).

In its opinion, the Court noted that the Just Compensation clause of the fifth amendment to the United States Constitution applies to the states through the fourteenth amendment. Therefore, a state is required to financially compensate a property owner for an actual physical taking. Furthermore, under *Mahon*, a regulation may be so excessive that it works a taking under inverse condemnation theory, denying the property owner of the use of the land without taking the property itself. *Id.* at 2386. The Court perceived no difference in the circumstances when a state physically deprives a landowner of its rights by eminent domain and when the deprivation is perpetrated by regulatory encroachment. Thus, because there are not distinguishing differences between eminent domain and inverse condemnation takings, the Court held that the just compensation clause warrants monetary compensation in the regulatory taking situation.

Under the facts in *First English*, the petitioner-Church alleged a taking for the period commencing from the time when the ordinance became effective accruing up until when the regulation would be struck down. Typically, "[o]nce a court determines that a taking has occurred, the government retains the whole range of options already available—amendment of the regulation, withdrawal of the invalidated regulation, or the exercise of eminent domain," *Id.* at 2389, thus leaving the property owner harmed for the period of time in which the law was effective. Until *First English*, landowners had no opportunity to recover damages for the "regulatory wrongs" of local government.

Siding with the Church's argument, the

Court declared, "[w]e merely hold that where the government's activities have already worked a taking of all use of property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective." *Id.* Thus, on remand, should a California court declare the ordinance to effect a taking, Los Angeles County must compensate the Church for a period beginning when the ordinance became effective until it is declared void.

Having finally clarified the issue of damages for inverse condemnation, landowners may feel relieved that they can receive compensation should a local government go too far in regulating land use. Anyone desiring to challenge such laws promulgated pursuant to police powers must still follow local and state procedures in pursuit of administrative remedies before a regulation may be challenged as an unconstitutional taking. Only then will the law be struck down when the challenger proves that it has been denied of all reasonable uses of the land. See generally, *Id.* at 2389.

As a result of *First English*, the Court has extended the Just Compensation Clause to the fullest extent possible by allowing compensation for a temporary regulatory taking of property. In subjecting local, state and federal governments to financial liability, despite a legislative power to amend or repeal an excessively encroaching law, the Court has simultaneously provided the widest possible protection of property rights and also inhibited local governments in their attempts to regulate land use by the police powers.

—Martin S. Goldberg

#### **Reagan v. Rider: STEPPARENT COMMITTING CHILD ABUSE LIABLE FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

In *Reagan v. Rider*, 70 Md. App. 503, 521 A.2d 1246 (1987), the Court of Special Appeals of Maryland affirmed the position of the Circuit Court for Baltimore County by holding that a teenage girl who had suffered from a six-year pattern of sexual abuse inflicted by her stepfather proved causation and injury sufficient for the jury to consider her claim of intentional infliction of emotional distress. In so holding, the court has given a clear signal that a stepparent committing child abuse may be sued for intentional infliction of emotional distress.

Glenda Ann Rider began living with her

mother, stepfather, grandmother and two stepbrothers at age ten. She claimed that she was the victim of several hundred sexual encounters with her stepfather which occurred while she was between the ages of eleven and seventeen. The encounters included sexual contact such as masturbation and cunnilingus, but not sexual intercourse. At first, she did not resist, but as she grew older she began to resist and eventually reported the activity to her mother. At her mother's urging, the police were notified and criminal charges were brought against the stepfather, John Matthew Reagan. Mr. Reagan was tried and acquitted of the criminal charges.

A civil suit including a claim of intentional infliction of emotional distress was brought in the Circuit Court for Baltimore County. The intentional infliction of emotional distress was the only count submitted to the jury and a verdict in favor of Ms. Rider in the amount of \$28,845 (\$18,845 compensatory damages and \$10,000 punitive damages) was entered. Mr. Reagan appealed.

The court of special appeals noted that the four elements necessary to impose liability for a claim of intentional infliction of emotional distress are essentially those listed in Section 46 of the Restatement (Second) of Torts, Ch. 2, Emotional Distress (1965) are as follows:

- (1) The conduct must be intentional or reckless;
- (2) The conduct must be extreme and outrageous;
- (3) There must be a causal connection between the wrongful conduct and the emotional distress; and
- (4) The emotional distress must be severe.

The court of special appeals viewed the case as presenting two questions:

- (1) Whether the evidence presented at trial was legally sufficient to allow submission of the case to the jury on the issue of causation; and
- (2) Whether the evidence presented at trial was legally sufficient to allow submission of the case to the jury on the issue of the severity of emotional distress?

*Reagan*, 70 Md. App. at 505, 521 A.2d at 1247.

Ms. Rider testified at trial that because of the sexual advances of her stepfather she had suffered extreme embarrassment, depression, mortification, humiliation and severe weight gain. In addition, Ms. Rider claimed that the sexual abuse hampered her ability to form normal relationships and caused her to engage in forms of unusual sexual behavior.

At trial, the testimony was supported by

the opinion of Dr. Michael N. Spodak, a forensic and clinical psychiatrist, who testified as an expert.

The Court of Special Appeals of Maryland separated its written opinion into two parts in order to deal with the two issues of causation and severity.

In regard to the issue of causation, appellant asserted that appellee failed to show a causal connection because the appellee's emotional distress did not become apparent immediately after and in direct response to the sexual acts. *Moniodis v. Cook*, 64 Md. App. 1, 494 A.2d 212, cert. denied, 304 Md. 631 (1985). The *Reagan* court however, rejected the interpretation that *Moniodis* requires that the distress must immediately follow the event which caused it.

Appellant further argued that there was evidence of other traumatic events which could have contributed to Ms. Rider's distress. This argument was also rejected by the court since the testimony of both Ms. Rider and Dr. Spodak indicated that any other possible causes of Ms. Rider's distress were directly attributable to appellant's conduct.

Accordingly, the court found adequate evidence from which a jury could find that appellee's emotional distress was caused by appellant's sexual abuse.

In regard to the issue of severity, the *Reagan* court noted that the court of appeals requires the plaintiff to show that she suffered a severely disabling emotional response to the defendant's conduct. *Harris v. Jones*, 281 Md. 560, 570, 380 A.2d 611, 617 (1977). The court of appeals went on to quote comment; of Section 46 of the Restatement, supra, which says in pertinent part, "[the] law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it." *Harris*, 281 Md. at 570, 380 A.2d at 616-617.

The *Harris* court also indicated that "it is for the court to determine whether, on the evidence, severe emotional distress can be found; it is for the jury to determine whether, on the evidence, it has in fact existed." 281 Md. at 571, 380 A.2d at 617.

The *Reagan* court then proclaimed:

We think the evidence in this case clearly established that appellee's distress is not a "neurotic overreaction to trivial hurts" which "are the price of a complex society." It is not "transient and trivial." Nor is it of such a nature that a "reasonable person in civilized society should be expected to endure it."

*Reagan*, 70 Md. App. at 507, 521 A.2d at