

MSC Opinion: Shepherd Montessori Center Milan v. Ann Arbor Charter Township

22. June 2010 By Matthew Nelson

In *Shepherd Montessori Center Milan v. Ann Arbor Charter Township*, the Michigan Supreme Court rejected a religious entity's equal-protection challenge to the denial of a zoning variance because the religious entity failed to demonstrate disparate treatment of similarly situated entities based on religion. Accordingly, the Court reversed the decision of the Court of Appeals and reinstated summary disposition in favor of the defendants. Justice Hathaway wrote the unanimous decision for the Court. The *Shepherd Montessori Center* litigation has been pending in the Michigan courts since 2000. In that year, Shepherd Montessori Center Milan, a Catholic non-profit entity, sought a zoning variance to permit it to operate a school in an office park in Ann Arbor Township. The space in the office park had recently been vacated by Rainbow Rascals, a secular preschool daycare. Both Rainbow Rascals and Shepherd Montessori had operated preschool daycares in the office park since 1998 under variances granted by the township's zoning board of appeals. Nonetheless, the township denied Shepherd Montessori's request for a zoning variance to operate a primary school in the office park.

Shepherd Montessori sued the township asserting various claims including that the township had violated Shepherd Montessori's equal-protection rights by treating Rainbow Rascals, a nonreligious entity, more favorably than Shepherd Montessori. The circuit court granted Defendants' motion for summary disposition, but the Court of Appeals [reversed](#). The Court of Appeals concluded that the defendants had conceded that Rainbow Rascals was a similarly situated nonreligious organization that was treated differently than Shepherd Montessori. Consequently, the Court of Appeals applied strict scrutiny to the denial of the variance, noted that the township failed to state a compelling state interest justifying the decision, and remanded the case for entry of summary disposition in favor of Shepherd Montessori.

The Michigan Supreme Court took the case on leave, "limited to consideration of '(1) whether the Court of Appeals applied the correct standard of review in determining that the defendants violated the plaintiff's right to equal treatment; and (2) whether the defendants violated the plaintiff's right to equal protection . . .'" The Court concluded that the Court of Appeals did not apply the correct standard of review because the Court of Appeals improperly concluded that the defendants had conceded that Shepherd Montessori and Rainbow Rascals were similarly situated. The Court concluded that defendants' "concession" was taken out of context. Further, the Court found that while the two entities were similarly situated for the purposes of obtaining a variance for operating a preschool—something that both entities requested and received—they were not similarly situated for the purposes of Shepherd Montessori's request for a variance to operate a school because Rainbow Rascals had

never obtained such a variance. Accordingly, the Court concluded that the defendants' decision was subject to a rational-basis review.

Applying the rational-basis test, the Court concluded that the defendants had a rational basis for their decision. The Court further concluded that Shepherd Montessori did not present any evidence to suggest that the defendants denied the variance based on religious animus. Accordingly, the Court reversed the Court of Appeals and reinstated summary disposition in favor of the defendants.