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STATE OF MICHIGAN

IN THE 9<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

JACQUELINE HOLEWA

Plaintiff,

v

Case No.: 2015-0287-AW

VILLAGE OF RICHLAND, PAUL GOBBLE,  
VIRGINA GROSS, ROBERT PRENTICE,  
KIMBERLIE LEWIS, KEVIN FOUST,  
GAIL KOPORETZ, DAVID GREVE and  
MICHAEL SCOTT

Defendant.

\_\_\_\_\_ /

EXCERPT - JUDGE'S RULING ON PRELIMINARY INJUNCTION

BEFORE THE HONORABLE ALEXANDER C. LIPSEY, CIRCUIT COURT JUDGE

Kalamazoo, Michigan - Monday, September 28, 2015

APPEARANCES:

For the Plaintiff

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EXHIBITS:      DESCRIPTIONS      IDENTIFIED      ADMITTED  
NONE

1 Excerpt - Judge's Ruling on Preliminary

2 Injunction

3 Kalamazoo, Michigan

4 Monday, September 28, 2015 - 3:23:53 p.m.

5 THE COURT: It's very interesting--interesting  
6 (inaudible). And, it's actually, while it is the context  
7 of a village government, I believe it is Americanism of,  
8 quite frankly, the political atmosphere in this country at  
9 a number of different levels.

10 I'm intrigued with regard to that, because we  
11 seem to have lost our way with civility and recognizing  
12 that we are all, I'll say it for a risk of offending some  
13 people, but we are all children of God and we should treat  
14 each other according.

15  
16 It appears from the arguments that have come back  
17 and forth, that at some point that particular basis human  
18 trait has been abandoned by multiple parties, for whatever  
19 reason resulting in a course of conduct that has ultimately  
20 resulted in this lawsuit being filed and the request for  
21 the injunction.

22 I'm somewhat sadden by that, because we as adults  
23 are models for the next generation and I don't think this  
24 would be something that anyone would be proud to have  
25 appear as an episode on 60 Minutes.

1                   That being said, the request in this matter is  
2 for a preliminary injunction, filed by the petitioner,  
3 requesting that she be allowed to perform her duties as  
4 Village Clerk. At some point there rose the occasion where  
5 the petitioner was incapacitated--went on medical leave and  
6 her duties were assumed by other individuals during that  
7 time of being away.

8                   On her return a decision on the part of the  
9 Village Counsel that she would not be allowed to resume her  
10 duties as Village Clerk. In essence, a decision was made  
11 to place this individual in a corner without duties and  
12 without compensation.

13                   Parties have cited statutory authorization for--  
14 under the general Village Law Act for the president to  
15 suspend any off--any officer authorized by the act or  
16 appointed pursuant to this act for neglect of duty, and  
17 with the approval of counsel, removal any officer appointed  
18 by the counsel when the president considers it in the  
19 public interest.

20                   I'm intrigued with the language of that  
21 particular Section 64.3, the first, basically, sentence of  
22 that. Because, I believe that the sense of that statute,  
23 as well as the sense of the argument back and forth, really  
24 relate to a different of type situation involving an  
25

1 individual who holds the office. Specifically, I view this  
2 as a measure of actions available to the counsel to  
3 continue the function of the village government. That is  
4 obviously, their primary responsibility and if there is  
5 something that prohibits here--impedes the operation of a  
6 village, the statute provides a mechanism by which that  
7 impediment can either be avoided, overcome or eliminated.

8 Elected officials are required to perform their  
9 functions; perform their duties. Elected officials are  
10 also, primarily responsible to the electors - people who  
11 have elected them to office. If an individual is prevented  
12 from performing his or her duties, the institution has an  
13 obligation to the community to find ways of having those  
14 functions performed in the absence of the office holder.

15 However, I do not believe it is the function of  
16 the institution to make a determination of the  
17 appropriateness of conduct of any office holder as it  
18 relates to the manner in which they perform their duties.

19 If an individual is performing in the function of  
20 to which they were elected, the mere fact that such  
21 performance is irritating, discriminatory in the, at least,  
22 legal sense, and in some ways even unprofessional, is not a  
23 basis on which that individual can be removed from office  
24 save by the elector who placed that individual in the  
25

1 office. I believe that it is a bedrock of our  
2 representative democracy.

3 To say otherwise would invite individuals to seek  
4 some legislative forcing of the elector's voice - so, in  
5 essence eliminate those individuals who are elected that  
6 the majority of those folks holding office believe are  
7 inconvenient or an irritation. While that may make things  
8 more efficient, it does not represent the bottom our--  
9 bottom line of our democracy.

10 The presentations of the parties in this matter  
11 clearly view this dispute in two very different ways.  
12 Petitioner believes that as the elected official she should  
13 be allowed to perform her duties and be compensated. And,  
14 that the only mechanism for removing her from that office  
15 is by the elector.

16 Respondents viewing the statute in the light most  
17 favorable to their position, believe that the president of  
18 the Village Counsel, subject to, I guess, ratification by  
19 the Village Counsel, has the responsibility for maintaining  
20 the smooth functioning of village government, and therefore  
21 can pick and chose who occupies which positions based upon  
22 an assessment of how well they are doing at the job.

23 That is precisely the decision making tool that  
24 should be available to the people. If an individual is not  
25

1 performing his or her job the elector has clear operation  
2 mandate at the poles.

3 If, on the other hand, an individual is violating  
4 the law there are other mechanisms by which that individual  
5 can be removed from office. If the individual is simply  
6 performing their function in a manner that is distasteful  
7 to others and reflects poorly on the institution as a  
8 whole, that is not a basis upon which to remove that  
9 individual from office.

10 The respondent has indicated that this is a  
11 suspension. However, it would appear to be an open/ended  
12 suspension. If respondent takes position that the petition  
13 can resume her duties simply by attending a meeting, at  
14 which point she receives the documents and the trappings of  
15 office back and begins the process of operating her  
16 position again. That has not been put on the table, as far  
17 as I can tell.

18 While the referred e-mail or letter, I'm sorry,  
19 of April 13, would appear to be an invitation to the  
20 petitioner to resume her functions, the language clearly  
21 says if you would like to discuss any details of your  
22 suspension, please contact the Village Administration and  
23 arrange a meeting.

24 My reading of that is that it's not an invitation  
25

1 to come back to work, but simply an explanation as to why  
2 she would no longer be allowed to work in her capacity as  
3 Village Clerk. Under those circumstances, I think it is  
4 quite clear that this is an indefinite suspension,  
5 presumably, until the next election. But, certainly not  
6 something that would be equivalent to a suspension of her  
7 functioning while she was recuperated from a medical  
8 condition.

9 As is pointed out, the issue of--the issuance of  
10 a preliminary injunction really looks to all of four  
11 corners with regard to justification. I believe it's clear  
12 looking at likelihood of success on the merits, likelihood  
13 or harm to, in this case the petitioner as opposed to the  
14 respondents balancing that. Whether there's an adequate  
15 remedy at law. I do not believe that there's any question  
16 that an injunction should issue based upon the positions of  
17 the parties.

18 Clearly, removal from office, which is what this  
19 is, is a function of the elector--elective office.  
20 Clearly, the petitioner by virtual of her not being allowed  
21 to perform her job is deprived of something beyond simply  
22 the salary of the job. The function of the clerk has  
23 certain responsibilities, certain attributes and certain  
24 privileges. All of which are denied to the petitioner by  
25



1 virtual of her being out of--out of office.

2 Clearly, the harm to the petitioner is  
3 substantially more than the harm to the respondent,  
4 although I understand the respondent's, by virtual of its  
5 public relations image, is maybe harmed by the presence of  
6 this clerk who apparently is the source of irritation at  
7 least to some of the citizenry.

8 Finally, the public interest in enforcement of  
9 this position, I believe is much more weighted towards a  
10 recognition that a elected official, even at the village  
11 level, is elected by the people and therefore their voice  
12 should be an ultimate with regard to whether that  
13 individual remains in office.

14 Looking at all of the factors in this matters, I  
15 do believe that it is appropriate and therefore, the court  
16 will sign a preliminary injunction requiring the village to  
17 provide the elected Village Clerk with all of the  
18 trappings, equipment and access necessary for her to  
19 perform her job.

20  
21 Mr. Chapman, you may present your proposed order  
22 and finding of facts, etcetera.

23 MR. CHAPMAN: Yes, your Honor. There's one  
24 question I have about the court's ruling. I didn't hear,  
25 and I may have missed it, but I didn't hear the court

1 addressing the issue of reinstatement retroactively of her  
2 compensation that was suspended in February and--and as--as  
3 the court is aware it's our position that in this context  
4 that is equitable relief. It's reinstating something that  
5 was taken from her, and the court's order would be an order  
6 for that to be paid to her at this point.

7 THE COURT: Well, Mr. Straub, do you have any  
8 reaction to that.

9 MR. STRAUB: Well--

10 THE COURT: Well, first of all there wasn't any  
11 part of the argument and I understand it's part of the  
12 documents, but an event.

13 Go ahead.

14 MR. STRAUB: Briefly, your Honor. I can  
15 understand counsel's argument to an extent. However, the  
16 fact of the matter is that she is an elected official. She  
17 was not present. Having nothing to do with whether it's  
18 her fault of not--

19 THE COURT: Yeah.

20 MR. STRAUB: --she was ill.

21 THE COURT: Yeah.

22 MR. STRAUB: The Village does have a  
23 responsibility to continue its services. To require the  
24 retroactive in placement of salary or benefits, I believe  
25

1 would be inappropriate at this stage. If the court were to  
2 order as injunctive relief that she is to be reinstated to  
3 her salary and benefits etcetera forthwith consistent with  
4 her appearance on the job, then I think that would probably  
5 be the more appropriate remedy.

6 Nonetheless, I'm not--I'm conceding the obvious -  
7 the court's ruling against the Village here--

8 THE COURT: Sure. Yeah.

9 MR. STRAUB: --and against the president.

10 THE COURT: Yeah.

11 MR. STRAUB: So, that being said that's how I  
12 would recommend the court proceed, but--

13 THE COURT: That's how you would argue, at least,  
14 that the court should proceed.

15 MR. STRAUB: --the court will order accordingly.

16 THE COURT: I understand.

17 MR. CHAPMAN: Yeah, I do think, your Honor, if I  
18 just may very briefly.

19 THE COURT: Sure.

20 MR. CHAPMAN: It does prompt me after hearing Mr.  
21 Straub's comments. There's two issues about compensation,  
22 of course. One is prospective compensation and what. Of  
23 course, it's our position that it was the original  
24 compensation before the suspension happened is what the  
25

1 compensation should be prospectively. Then our other  
2 position, of course, is that as part of the equitable  
3 relief retroactively the cut-off of compensation should be  
4 reinstated.

5 THE COURT: The court believes that--quite  
6 frankly, as of 3:40 on September 28<sup>th</sup>, of 2015, petitioner  
7 is reestablished as the Village Clerk. From--from an  
8 equitable standpoint that that is the issue before me. The  
9 question of compensation as retroactively, at this  
10 particular point, I believe is a, quote/unquote, "legal"  
11 questioning; though technically it's not. It's an issue of  
12 damages and I certainly would anticipate that if that's  
13 going to be a discussion it will be part of that  
14 discussion.

15 I--I am not convinced that the specifics with  
16 regard to dollars is part of the overall discussion with  
17 regard to the injunctive relief, because I believe that it  
18 is a matter of reinstatement to her elected position and  
19 that certainly from--at--for the purposes of today that  
20 would be sufficient. I'm not foreclosing, obviously,  
21 petitioner from--as part of the overall action in this  
22 matter seeking to get or filing a separate action demanding  
23 compensation as part of the damages suffered by the  
24 improper act of the Village. But, I'm not prepared to say  
25

1 that that's an equitable relief that I'm willing to give  
2 today.

3 So, petitioner is reinstated into her position,  
4 you know, which would include salary, benefits and other  
5 parts of her office. That is as of today going forward.  
6 Parties may argue about back pay, if you will, at some  
7 point later.

8 MR. CHAPMAN: Your Honor, yeah, I--I know the  
9 hours late and you have another matters.

10 THE COURT: No. No. I've got some other people.

11 MR. CHAPMAN: The question I have and I'm trying  
12 also to avoid the prospect that we'll be back here very  
13 soon, unless we have guidance from, your Honor.

14 So, I do hear your view about the back pay, we're  
15 calling it situation, and I respect that. I hear that. I  
16 also hear that I'm--I'm reserved--I have reserved the  
17 opportunity to come back in front of you for that if I need  
18 to or wish too.

19 The other question though, as to the prospective  
20 pay. There was a circumstance, the court is aware from the  
21 pleadings, where there was a reduction in the supposed  
22 compensation after she was suspended--after the plaintiff  
23 was suspended. So, there will be a question that I'm sure  
24 Mr. Straub's counsel--client will be asking him; so, what  
25

1 pay do we reinstate her at. And--and, it's our position  
2 that the reduction was itself an interference with her.  
3 So, the reinstatement should be at the original as of the  
4 February 2015, budget.

5 THE COURT: I'm--Mr. Straub, I anticipate would  
6 you raise the question about that. However, I believe that  
7 that's--that is the appropriate level of the compensation.  
8 I'm--I'm--I'm a struck by, and to a certain extent it's not  
9 something the court has to deal with because  
10 constitutionally we are protected from the legislature  
11 coming in and cutting our salaries, but I am struck by the  
12 fact that there is at least the potential for an elected  
13 official being docked in pay, either because of lack of  
14 performance or because they're on the wrong side of a  
15 political issue or whatever.

16  
17 As it relates to this matter, I believe that the  
18 appropriate level of compensation would be at her original  
19 terms - whatever that--those terms and conditions were at  
20 the time that she took her medical leave, quite frankly.

21 MR. CHAPMAN: Thank you, your Honor. I don't  
22 have any--

23 MR. STRAUB: Thank you, your Honor.

24 MR. CHAPMAN: --any other questions. I do have  
25 an order, but I do need substantially revise it.

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THE COURT: I can imagine.

MR. CHAPMAN: And, so --

THE COURT: I always go--

MR. CHAPMAN: --what I will do is work with Mr. Straub and attempt to develop a consensus order for your Honor.

THE COURT: That would be--that would be acceptable.

Thank you.

MR. STRAUB: Thank you, your Honor.

MR. CHAPMAN: Thank you, your Honor

(At 3:47:27 p.m., proceedings concluded)

1 STATE OF MICHIGAN )  
2 )  
3 COUNTY OF KALAMAZOO )  
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6 I certify that this transcript consisting of 16 pages, is a  
7 complete, true, and correct transcript of the EXCERPT - JUDGE'S  
8 RULING ON PRELIMINARY INJUNCTION to the best of my ability, of  
9 the proceedings held in this case on Monday, September 28, 2015  
10 before the Honorable Alexander C. Lipsey.  
11

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14 OCTOBER 3, 2015



15 \_\_\_\_\_  
16 Date

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