

1 THE COURT: This is State of Wisconsin, ex
2 rel, et al. versus William Chesen, et al.

3 Appearances, please.

4 MR. WILLIAMS: David C. Williams appears for
5 the -- for plaintiffs.

6 MR. RASMUSSEN: Attorney David Rasmussen
7 appearing as a co-counsel for two plaintiffs Mary Jo
8 Fesenmaier and Thomas Spellman.

9 MR. WIRTH: Defense appears by Joseph Wirth,
10 your Honor.

11 THE COURT: All right. Just a little bit of
12 preliminary matters before we get to the substance of
13 the agreement which I have been informed has been
14 worked out.

15 This case was originally assigned to Judge
16 Race who's the Civil Court judge and after it went up
17 to the Court of Appeals and came back, there was a
18 substitution filed on Judge Race. It was then assigned
19 by our random assignment system to Judge Carlson.
20 Judge Carlson then recused himself and it was assigned
21 on our random assignment system to me and that's how I
22 got involved in this thing in the first place.

23 I have called this for lack of a better term
24 a mediation session. More of a pretrial, to discuss
25 the course of the litigation and legal matters for the

1 purpose of seeing if the people involved could in the
2 interest of the citizens of the City of Lake Geneva
3 resolve this matter short of going any further into any
4 kind of hearing, arbitration expenses or fees.

5 The -- Before we got together, I met with
6 the three attorneys who are here present and we
7 discussed potential ways in which to settle this and
8 they have conferred with their clients and I believe
9 that there is a resolution and I'm going to turn it
10 over to Mr. Wirth to state for the record that
11 resolution.

12 MR. WIRTH: Thank you, your Honor. And as we
13 have discussed between counsel and with the Court --
14 umm -- the individual plaintiffs in this case have
15 taken great pains to make sure that any resolution
16 that's proposed today be a resolution between the
17 individual parties and not an action binding on the
18 Lake Geneva City Council. It was not our intent and I
19 do not believe that today we have engaged in official
20 city business or made any binding promises or
21 contingencies upon the City of Lake Geneva. Instead,
22 what we have agreed to do in this case is the mayor
23 will agree to reinstate the two suspended aldermen,
24 Fesenmaier and Spellman and drop the preferred charges
25 against the four aldermen at issue in this case, the

1 plaintiffs to this action. It is offered with the
2 understanding that through -- umm -- some discussions
3 with one of the sitting aldermen, Spyro Condos, that he
4 will resign his First District seat in a manner that
5 permits him and for the purpose of permitting an
6 election in April of 2010. So my office will draft a
7 letter and fax it to Mr. Condos soliciting his
8 signature on that agreement. Umm -- Assuming that
9 takes place, then what will happen is the alderman will
10 be reseated, the charges will be dropped, and my
11 understanding there's an election in December. There
12 will be a number of elections in April. Umm -- It is
13 the intent of the parties to this agreement that the
14 reinstatement of the two aldermen remain suspended
15 occur prior to 9 o'clock a.m. on Monday, November 30.
16 That this reinstatement will involve a reinstatement to
17 any committees upon which the aldermen served and will
18 include those necessary elements of involvement such as
19 their keys and stuff like that being returned to them.

20 In addition, this lawsuit the parties have
21 agreed will remain open for judicial supervision with
22 the request that the court set it for a status
23 conference in April of 2010, but in the interim I
24 believe the plaintiffs have agreed to dismiss this
25 action as against McBride, Taggart, Flemming, Magee and

1 Dykstra. It is further the intent of this agreement
2 that the reinstatements not subject the aldermen to
3 resuspension for the issues at least involved in this
4 litigation. Obviously, there are so many contingencies
5 in the normal operation of city government that it
6 can't be blanket agreement, but for purposes of this
7 litigation there will be no resuspension for the issues
8 at stake in this lawsuit.

9 So in summary -- umm -- with the
10 understanding that Mr. Condos has agreed to or will
11 agree to tender his resignation for his First District
12 seat, reserving his rights to run for that seat and
13 indeed for the purposes of securing it for starting an
14 election in April of 2010 -- umm -- the alderman will
15 be reseated, the charges will be dropped and the normal
16 activities of government will be reinstated.

17 THE COURT: Mr. Williams.

18 MR. WILLIAMS: I would just like to add for
19 the record the fact that my clients did not request
20 Mr. Condos to resign from his position. We didn't even
21 discuss it with him. That was a discussion had with
22 your Honor and that wasn't part of our agreement that
23 he resign. That was -- umm -- Whatever his decision
24 was was his alone and not requested by us or even
25 discussed by us with him.

1 THE COURT: In all respects, is that the
2 agreement then?

3 MR. WILLIAMS: Pardon me?

4 THE COURT: Is that the agreement in all
5 other respects?

6 MR. WILLIAMS: Yes. Yes. I have no other --
7 nothing else to add.

8 THE COURT: Mr. Rasmussen?

9 MR. RASMUSSEN: Nothing further, your Honor.
10 Thank you.

11 THE COURT: All right. For the record, when
12 we were back informally pretrying this matter, the --
13 it became clear to me that possibly the best way to
14 resolve this was to contact Mr. Condos. Everyone
15 agreed that he's not a party to this action. He's not
16 a witness to this action. He's not, certainly not even
17 an attorney in this action. He's completely outside
18 the confines of this action. Everyone agreed it would
19 be an appropriate lubricant if I were to give
20 Mr. Condos a call and I will tell you this, that
21 Mr. Condos graciously, for the good of the city,
22 indicated that he would tender his resignation as First
23 District alderman with the proviso that it only need be
24 in such a fashion that would allow him to be eligible
25 to run for the First District aldermanic position

1 and/or mayor and/or any position that's available in
2 the City of Lake Geneva or anywhere else. He's not
3 precluded from running in April and that in essence was
4 the basis of his position. And this was a scenario
5 that he agreed to so that there could be peace in the
6 city and that the city could present united front in
7 the event or in the face of the litigation in federal
8 court and in all other respects clear at this time, the
9 city needs to move forward and put these things behind
10 it. So in essence I congratulate Mr. Condos for being
11 willing to do this.

12 I want to just ask the parties who are
13 presently here if this agreement that has been stated
14 on the record is an agreement that they join. I'm
15 going to ask Mary Jo Fesenmaier, do you agree to this?

16 MS. FESENMAIER: Yes, I do.

17 THE COURT: Arleen Krohn, do you agree to
18 this?

19 MS. KROHN: Yes, I do.

20 THE COURT: Penelope Roehrer, do you agree to
21 this?

22 MS. ROEHRER: Yes, I do.

23 THE COURT: Thomas Spellman, do you agree to
24 this?

25 MR. SPELLMAN: Yes, I do.

1 THE COURT: And then William Chesen, do you
2 agree to this?

3 MR. CHESEN: With some reluctance, your
4 Honor; yes, I do.

5 THE COURT: Okay. And I'm going to presume
6 that Ms. Dykstra, Mr. Fleming, Mr. Magee, Mr. McBride,
7 and Mr. Taggart are not sorry to be dismissed from this
8 case. Anyone here object to that?

9 MR. WIRTH: I've spoken with them, Judge,
10 they don't object to being dismissed.

11 THE COURT: All be dismissed without
12 prejudice.

13 I believe that's everything. Is there
14 anything else going on at this time I need to know
15 about?

16 MR. WIRTH: That should do it for today.

17 THE COURT: All right. Well, God bless
18 everybody. I hope it all works. Even though I don't
19 live in the City of Lake Geneva and don't have a dog in
20 this fight, I've lived 30 years within a mile of it and
21 it's a little like living on the earth, I need the sun
22 to function, so Lake Geneva is where I do everything
23 and I hope this works out.

24 Good luck to everybody.

25 Okay. We are adjourned.

1 Let me add one more thing. My court reporter
2 here, Rhonda, is available if somebody wants it, to
3 type out a transcript of this resolution and so that
4 there will be no confusion. If anybody wants to have
5 that, just say so and you can order that right now.

6 (Whereupon hearing concluded.)

7 * * *

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF WISCONSIN)

2 COUNTY OF WALWORTH)

3

4 I, RHONDA S. BOSS, RMR, Court Reporter, do hereby
5 certify that I reported the foregoing matter and that
6 the foregoing transcript, reduced to typewriting by
7 computer-aided transcription, consisting of 6 pages
8 inclusive, is a true and correct transcript of the
9 proceedings had as contained in my stenographic notes.

10 Dated at Elkhorn, Wisconsin, this 25th day of
11 November, 2009.

12

13

14

15



16

17

18

19

20

21

22

23

24

25

The foregoing certification of this
transcript does not apply to any reproduction of the
same by any means without an original ink signature of
the certifying reporter.