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STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

ANDREW GASSER,)
)
Plaintiff,)
)
vs.)
)
KAREN LUKASIK, et al.,)
)
Defendants.)

No. 17 CH 435

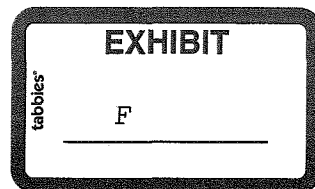
ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS

had in the above-entitled cause before the Honorable
MICHAEL T. CALDWELL, Judge of said Court, on November
17, 2017, in the morning session.

APPEARANCES:

MR. ROBERT T. HANLON
Appeared on behalf of the Plaintiff.

[!FIRM2]
BY: [!ATTORNEY2]
Appeared on behalf of the Defendants.



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APPEARANCES: (Cont.)

MATUSZEWICH & KELLY, LLP.
BY: MR. JAMES KELLY
Appeared on behalf of the Defendants,
Algonquin Township and Charles Lutzow.

THE GOOCH FIRM
BY: MR. THOMAS W. GOOCH, III
Appeared on behalf of the Defendant,
Robert Miller.

MR. STEVEN J. BRODY
Appeared on behalf of the Defendant,
Anna May Miller.

MR. PHILIP PROSSNITZ
Appeared on behalf of the Defendant,
Charles Lutzow.

ALSO PRESENT:

MS. DENISE AMBROZIAK
Appeared on behalf of Ryan Provenzano.

I N D E X

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<u>WITNESS</u>	<u>EXAMINATION</u>	<u>PAGE</u>
Charles Lutzow	Direct by Mr. McArdle	33
Karen Lukasik	Direct by Mr. McArdle	41
	Cross by Mr. Kelly	50
	Redirect by Mr. McArdle	65

1 THE COURT: Andrew Gasser vs. Karen Lukasik?

2 I'll take these matters up at 9:30.

3 A VOICE: Thank you.

4 (WHEREUPON, the case was passed and
5 later recalled.)

6 THE COURT: Andrew Gasser vs. Karen Lukasik?

7 It looks like the charge of the light
8 brigade.

9 MR. HANLON: Good morning, your Honor, Robert
10 Hanlon on behalf of Plaintiff, Andrew Gasser.

11 MR. GOOCH: Thomas Gooch on behalf of Robert
12 Miller.

13 MR. KELLY: James Kelly on behalf of Chuck Lutzow
14 and the Township.

15 MR. BRODY: Steven Brody on behalf of Anna Miller.

16 MR. GUMMERSON: Mark Gummerson on behalf of Karen
17 Lukasik.

18 MR. McARDLE: Dave McArdle for Lukasik too.

19 THE COURT: The first order of business is what?

20 MS. AMBROZIAK: Your Honor, I'm sorry.

21 THE COURT: I'm sorry?

22 MS. AMBROZIAK: Denise Ambroziak on behalf of Ryan
23 Provenzano, who is not a party to this case but was
24 noticed to be here.

1 My position is that he was not a party to
2 this case, and he has also not been subpoenaed.

3 THE COURT: If he's not a party to this case -- If
4 he's not a party to this case and you haven't filed an
5 appearance, there's nothing to be done.

6 MS. AMBROZIAK: I'd be happy to file an appearance
7 this morning, your Honor.

8 THE COURT: Are you filing an appearance for a
9 non-party?

10 MS. AMBROZIAK: Well, we can do a limited for a
11 friend of the Court.

12 Regardless, Mr. Provenzano is not a party to
13 this case, and so I just wanted to make sure that
14 nothing adverse happened with regard to his request to
15 be (Unintelligible).

16 THE COURT: Then you (Unintelligible) the
17 proceedings.

18 MS. AMBROZIAK: Thank you, your Honor.

19 THE COURT: The first order of business is what?

20 MR. GOOCH: Judge, I had an emergency motion
21 noticed for 9:00 that you passed to 9:30.

22 THE COURT: All right.

23 MR. GOOCH: We furnished you a courtesy copy --

24 THE COURT: I didn't get a copy.

1 MR. GOOCH: -- earlier in the week.

2 I did receive about five minutes ago a motion
3 to strike a motion brought by Mr. Hanlon, which I don't
4 think is permissible.

5 THE COURT: There's no such thing as a motion to
6 strike a motion.

7 MR. GOOCH: I don't know if there is.

8 MR. HANLON: Actually various paragraphs within
9 his motion, Judge.

10 THE COURT: I'm sorry?

11 MR. HANLON: Various paragraphs within his motion,
12 and collectively it would resolve his motion.

13 But I don't even think it's necessary, Judge,
14 because Mr. Gooch has indicated to me earlier that the
15 error that he made in Paragraph 12 may resolve his
16 motion, and I'd be prepared just to argue his motion on
17 its face.

18 MR. GOOCH: But --

19 THE COURT: All right. Mr. Gooch?

20 MR. GOOCH: Judge, I -- I think all this has to
21 stop.

22 But I think I'm going to file by Monday or
23 Tuesday a motion suggesting that Mr. Gasser does not
24 have standing to bring this complaint. It's a two-count

1 complaint, one of which is for injunctive relief, which
2 you've already granted. So as far as I see Count I you
3 restrained everybody, including the Plaintiff, from
4 destroying any records, which is what Count I sought.

5 Count II seeks an accounting from a current
6 highway commissioner against a former highway
7 commissioner, neither one of which are the treasurer of
8 the funds. But I'll address that in the standing
9 motion.

10 But what is happening, Judge, is we're going
11 on discovery. And I don't seek to ask you to bar anyone
12 from talking to the press -- the real press. I have a
13 real problem with people taking discovery documents and
14 interrogatory answers within days and furnishing them to
15 somebody that runs a gossip blog for publication.

16 And I have real problems with them conducting
17 discovery only to try to entice law enforcement agencies
18 into prosecuting somebody criminally. That's not the
19 purpose of the Code of Civil Procedure nor this lawsuit.

20 And, I mean, they subpoena all my client's
21 private e-mails. They've already been delivered to a
22 law enforcement agency. I don't have any. They don't
23 bother to furnish me copies of what they get. I have an
24 ongoing notice to produce that should have required a

1 production of all those things. They don't produce it.
2 They don't produce anything.

3 They just -- They make these long rambling
4 answers, and then they furnish them to Cal Skinner to
5 publish on his blog, and that's not the purpose of
6 discovery. They take them to the FBI office. They take
7 them to the State's Attorney's Office. They take them
8 to the McHenry County Sheriff. They try to furnish the
9 Illinois State Police with them. Now they have the
10 Edgar County Watchdogs involved, and they furnish them
11 documents.

12 But discovery should be limited to the issues
13 of the case, and there are no issues that they have the
14 right to bring.

15 So all I'm asking you to do is to stay
16 further discovery until I get my motion on file, which
17 I'll do early next week, and you have a hearing to
18 determine whether or not they do, in fact, have standing
19 to ask what they're asking, which really is only Count
20 II now for an accounting.

21 And you're as familiar with the Township Code
22 as I am -- probably more so. And the treasurer of the
23 road district is the supervisor and chairman of the
24 Board of Trustees, not the highway commissioner. So how

1 do you seek an accounting against a former highway
2 commissioner? All of those records are in possession of
3 the clerk.

4 If there are records that have been
5 destroyed, then the cause of action belongs to the
6 clerk. You've already entered an order finding the
7 clerk is the custodian of the Township records, not Mr.
8 Gasser.

9 I mean, this is a man who -- who is now
10 referring to himself as the omega and -- and stating in
11 social media that they'll -- they will have to kill him
12 to get him to stop. I mean, I don't know what's going
13 on down there, but I do know that they don't have the
14 standing to maintain this lawsuit, and I'll prove that
15 to you.

16 And before any more damage is done to
17 people's reputations by the isolated use of portions of
18 discovery to make something look like it's occurred that
19 hasn't, I'm just asking you to stay discovery until that
20 motion is determined. It's certainly to be determined
21 within 30 days.

22 THE COURT: Mr. Hanlon?

23 MR. HANLON: Judge, before we started today, I
24 asked Mr. Gooch if his Paragraph 12 was a typographical

1 error in which in his Paragraph 12 he articulated the
2 Defendant seeks an accounting and some type of --

3 THE COURT: I want you to address the broader
4 motion on the stay, not the individual paragraphs in
5 this emergency motion. I don't want to get sidetracked
6 into that.

7 MR. HANLON: No, Judge, that -- It goes to a
8 substantive point that I wish to make, and that is that
9 Mr. Gooch acknowledged that that particular paragraph
10 was a typographical error, and he meant to say the
11 Plaintiff.

12 MR. GOOCH: Yes.

13 MR. HANLON: If you remove that paragraph or that
14 you amend that on its face, as Mr. Gooch had articulated
15 to me ought to have been done, there is nothing asked
16 for within the motion by way of a prayer for relief or
17 for relief in the motion itself. There's nothing in the
18 motion that says this is the relief that I seek.

19 But even having said that, Mr. Gooch's motion
20 is based strictly upon hearsay of and apparently the
21 testimony of Mr. Gooch because he fails to attach his
22 local Rule 205 affidavit as required of him
23 underneath -- 205(b) of the local rules, which has to
24 set forth the nature of his purported emergency. And

1 based upon that alone is sufficient grounds to deny the
2 relief that he seeks in his motion. That's if he
3 actually sought relief in his motion, but he didn't cite
4 relief in his motion.

5 What he's articulated now to the bench is
6 that there's this grand conspiracy about what's being
7 done. And the -- The thrust of his motion is, oh, my
8 God, Mr. Hanlon is out of control. He's doing all
9 this -- this discovery.

10 I issued one subpoena for the missing e-mail
11 records of the highway department. In the -- as an
12 example -- Excuse me. I misplaced -- As an example,
13 while Mr. Miller was in office in the Algonquin Township
14 news they cite forth all the contacts for the respective
15 parties. And the highway commissioner's contact is
16 listed as BobMiller@MC.net.

17 I subpoenaed the records from
18 BobMiller@MC.net. As I set forth in my complaint saying
19 these records are missing.

20 Now it seems to me that when Mr. Gasser is
21 being asked to respond to things that were done and
22 articulated via e-mail with his predecessor, he ought to
23 have the records of the predecessor for his office.

24 Moreover, as he -- Mr. Gooch gets into this

1 issue of standing about a motion he's going to file, he
2 hasn't filed a motion. So what he wants this Court to
3 do is sua sponte have a hearing on standing issues that
4 has not been briefed and that the opposing party has not
5 had an opportunity to brief before this Court on an
6 emergency motion that's based upon Mr. Gooch's hearsay
7 that's based then in part on the authority to stop it as
8 articulated in an opinion piece of a newspaper.

9 Mr. Gooch even makes bold statements in his
10 motion that I've charged \$136,000 to, you know, my
11 client. And to be clear, I haven't charged a penny on
12 this case to my client. I -- And he should know that
13 because when there's an insurance policies that were
14 distributed, they were distributed amongst the other
15 counsel on the case.

16 When he comes here for a discovery relief, he
17 doesn't cite to a single discovery abuse in this case if
18 that's what he's asking the Court to do. So what is the
19 discovery abuse? He doesn't cite to it within the body
20 of his motion. Now he wants to articulate the -- what's
21 on social media.

22 The problem Mr. Gooch has is that these
23 documents constitute public records. They are available
24 to the public. And once Mr. Gasser has them, what does

1 he do? He tenders them to the clerk. When he tenders
2 them to the clerk, that's further indication.

3 But if you look at Paragraph 13 of Mr.
4 Gooch's motion, in Paragraph 13 of his motion he
5 indicates that he's already gave the same records to the
6 clerk, the same e-mails that were obtained via subpoena.
7 So if they were Bob Miller's personal e-mails, they
8 wouldn't be given to the clerk.

9 The reason that they're -- that this even
10 came up, Judge, that the subpoena was issued was because
11 the bill for the e-mail account was sent to the highway
12 department to be paid. So Bob Miller to this day is
13 accessing e-mails. The discovery then revealed that the
14 e-mails that he was receiving included the voice mails
15 that Andrew Gasser was receiving, you know, into his
16 office to this very day with Mr. Miller accessing those
17 e-mails remotely. So what those e-mails demonstrate is
18 that Mr. Miller not only is involving himself in the
19 business of the Township highway department, he is doing
20 it on an ongoing basis. And that's something certainly
21 Mr. Gasser has standing to stop. And that is something
22 that has been the product of legitimate discovery about
23 a legitimate issue which was disclosed within the body
24 in the four corners of the complaint. We haven't done

1 anything beyond that other than issue one deposition --
2 one subpoena for deposition.

3 THE COURT: What is there -- What is there to
4 discover in this case if you've already gotten the
5 relief you requested in the complaint?

6 MR. HANLON: I haven't gotten the relief that was
7 requested in the complaint because there's all sorts of
8 other records that are missing. And since there's other
9 records that are missing, and that the --

10 THE COURT: Apparently you asked for a stay order
11 to stop the destruction of records.

12 MR. HANLON: Okay.

13 THE COURT: A temporary -- A preliminary
14 injunction was entered on that relief at least on the
15 counterclaim. We have --

16 MR. HANLON: It was --

17 THE COURT: -- an injunction in place regarding
18 the destruction of records.

19 MR. HANLON: That's correct.

20 THE COURT: What else is there? What else is
21 there?

22 MR. HANLON: There is a second count to the
23 complaint for -- seeking an accounting of the records
24 and the assets of the --

1 THE COURT: And that's the very issue Mr. Gooch
2 was to address in his forthcoming motion, correct?

3 MR. GOOCH: Correct, your Honor.

4 MR. HANLON: In his forthcoming motion because
5 before the Court --

6 MR. GOOCH: Because it's the right of the -- It's
7 the right of the Township clerk to obtain records if
8 they're missing, if they're missing. You already
9 entered an order that said she was the custodian --

10 THE COURT: Right.

11 MR. GOOCH: -- of all the records.

12 So that's why I characterize this as nothing
13 more than a witch hunt for entertainment purposes. And
14 I have a lot more to say. I'm not sure if Mr. Hanlon is
15 done yet or not.

16 THE COURT: Are you, Mr. Hanlon?

17 MR. HANLON: No, I was not.

18 MR. GOOCH: I thought not.

19 MR. HANLON: The -- In Section 605 ILCS 56-2018 it
20 sets forth the requirement that the highway commissioner
21 not the clerk, not, you know, the supervisor -- produce
22 a report for the amount of the money received by the
23 district in a full detailed statement, the amount of the
24 assets, an inventory of the tools, you know, having, you

1 know, the present value, machinery, the equipment owned,
2 you know, by the district. And where those assets are
3 located is something that's -- has become quite a
4 mystery.

5 There's all sorts of assets that clearly
6 appear to have been removed from the Township. And
7 based upon what, you know, we know at this point in time
8 that Mr. Gasser can't fulfill his statutory duties
9 underneath that section of the Act unless he gets the
10 relief that he seeks for with respect to the second
11 count, the accounting claim. And this is something that
12 needs to be briefed, Judge.

13 And as Mr. Gooch files the -- a smorgasbord
14 of hearsay without a single affidavit attached to it,
15 without doing any of the typical things that you would
16 do, he comes to this Court and says give me this relief.
17 And he doesn't even specify in his motion the relief
18 that he seeks. And then I'm asked to respond to it.
19 And so now what we're doing is we're having a discussion
20 over the hypothetical motion of what Mr. Gooch has
21 advanced because he doesn't even have a proper prayer
22 for relief within his own motion.

23 MR. GOOCH: I think, Judge, Paragraph 13 is what I
24 asked you to do. And in the addendum I ask you to grant

1 the relief sought on the motion is. What I want you to
2 do is stay the discovery. That's in Paragraph 13.

3 Now, as far as this one subpoena, this got
4 started when I got this e-mail -- it's attached as
5 exhibit C to my motion from Mr. Hanlon -- stating that
6 now he was looking into bidding. And he will be
7 forwarding to, quote, to you a separate series of
8 subpoenas in the next few days after I serve them along
9 with other counsel. We're supposed to get them when he
10 issues them, not when he serves them. And he then goes
11 on to his diatribe about a street sweeper, which
12 certainly has nothing to do with the bids.

13 Then he sends me another one telling me that,
14 no, I need his discovery response or you can do what you
15 will, but I will take Bob's deposition, and this is
16 going to get exceptionally ugly for him.

17 I don't know what ugly means, but it can't be
18 anything good. And I do know that the Code of Civil
19 Procedure doesn't permit ugliness.

20 But what I'm suggesting to you -- and the
21 statute to you -- which is cited, Judge, those are only
22 partial statutes. What it says is the highway
23 commissioner every March will file an inventory and
24 present it at the annual town meeting, not that one

1 highway commissioner can make another one do it. And
2 it's presented to the Board of Trustees.

3 It's very clear that if there are still
4 records to be produced, it's the clerk's cause of
5 action, not the highway commissioner's. The clerk is
6 the clerk also of the road district and also sometimes
7 referred to as a -- by misnomer as a highway department.

8 A 30-day stay of all discovery is not going
9 to harm anyone. And it will give us time to determine
10 what's left in this case. I don't think there's
11 anything left in it because that accounting belongs to
12 the town board and the treasurer, not to the highway
13 commissioner.

14 MR. HANLON: May I reply, Judge?

15 MR. GOOCH: No, I should have the last word.

16 MR. HANLON: Well, he's raised new issues.

17 THE COURT: Well, you'll get the last word.

18 Mr. Hanlon?

19 MR. HANLON: May I, Judge?

20 THE COURT: What? You have something to say?

21 MR. HANLON: Yes, sir, Judge.

22 THE COURT: What?

23 MR. HANLON: With respect to his allegations of
24 threats, he clearly made a specific threat to me in the

1 preceding e-mail -- in an e-mail chain, which is evident
2 in his own Exhibit D, in which he says if I don't
3 dismiss this lawsuit in one week, he's going to seek
4 sanctions against me. And so I simply responded, no, I
5 need to get my discovery done.

6 Now, when it comes to the issue of discovery,
7 he wants to have a -- now for the first time he wants a
8 30-day. He didn't put it in his motion.

9 With respect to this argument about the
10 powers, rights and duties -- all not within his
11 motion -- and so this is a from the hip type of thing
12 and this great terrible sufferance that his client has
13 had, in -- I think it's Paragraph 6 of his complaint he
14 says he's not coming for a deposition anyway.

15 And so, you know, in what kind of case does a
16 party to a lawsuit not have to sit for a deposition
17 because he's concerned that there's a criminal
18 investigation that he's the subject to.

19 THE COURT: If there is a criminal investigation,
20 there is a constitutional prohibition against
21 self-incrimination is -- is in play.

22 MR. HANLON: And he can exercise -- And he can
23 exercise the Fifth Amendment privilege. But then he has
24 to exercise the privilege. And he hasn't exercised the

1 privilege.

2 So you simply have Mr. Gooch saying I'm not
3 going to produce him. Okay. Then say that he's going
4 to exercise his Fifth Amendment privilege. Put it on
5 the record. Let's be done with it.

6 MR. BRODY: And then you can submit those to the
7 blog for publication.

8 THE COURT: I'm sorry?

9 MR. BRODY: I'm sorry. Never (Unintelligible).

10 MR. HANLON: And, Judge, I haven't submitted a
11 single thing to the blog, not one single thing.

12 MR. GOOCH: Then let's bring Mr. Gasser up and ask
13 him if he's caused these things to submit -- to be
14 submitted to this gossip blog.

15 Judge, let me say on the subject of
16 sanctions, I -- Again, Mr. Hanlon expands. What I said
17 was here's my settlement idea. You dismiss immediately,
18 and I will forego the sanctions I will seek against
19 Gasser personally. Never -- Never said anything about
20 seeking sanctions against Mr. Hanlon.

21 I don't -- Frankly, I think it's a bad
22 practice for lawyers to seek sanctions against each
23 other. Never done it.

24 THE COURT: Well, I think the issue -- This issue

1 of standing has to be resolved before anything else is
2 determined in this case. That having been said, we're
3 running out of time here.

4 MR. GOOCH: I'm going to have it on file Tuesday.
5 Maybe even Monday. You know, I did -- I finished the
6 research yesterday.

7 MR. HANLON: Then we got to brief before you're
8 all done.

9 THE COURT: I'm finished here. My last day in the
10 building is on December 15th.

11 MR. HANLON: I don't see how we would brief it,
12 you know, fully by the time that you depart, your Honor.

13 MR. GOOCH: It seems to me like a week. I don't
14 need to reply. You can still have a hearing.

15 It's only November 17th.

16 MR. HANLON: So he gets to -- to take months to
17 prepare some motion, and I'm not going to have a proper
18 time to respond to it?

19 MR. GOOCH: He should have thought about all this
20 before he created this lawsuit.

21 THE COURT: How much time do you need, Mr. Hanlon?

22 MR. HANLON: I haven't seen his motion.

23 If I saw his motion -- If he, you know, put
24 it on paper and had something that's properly before the

1 Court, I would be able to tell your Honor how much time
2 I would need. But I would certainly need, you know, at
3 least 28 days and potentially more.

4 MR. GOOCH: That's not reasonable.

5 THE COURT: In this case this issue will be
6 continued to November the 30th. You're going to get a
7 new judge on it by that time.

8 MR. GOOCH: I'm sorry, sir?

9 THE COURT: You're going to get a new judge by
10 that time.

11 MR. GOOCH: All right. You're not going to rule
12 on my motion today?

13 THE COURT: I'm going to rule on your motion
14 today.

15 Discovery is suspended until this issue is
16 resolved.

17 MR. GOOCH: Okay.

18 THE COURT: All discovery. That means whether
19 that is of the Defendant, Robert Miller, Anna May
20 Miller, or any other witnesses who have previously been
21 subpoenaed.

22 Nothing goes out. This case stays dormant
23 until this issue of standing is resolved.

24 Do we understand one another?

1 MR. HANLON: Yes, your Honor.
2 MR. GOOCH: On November 30th, Judge, it's set for
3 status?
4 THE COURT: Yes.
5 MR. GOOCH: Just status?
6 THE COURT: Number one that your motion is on
7 file, and number two, the time that's needed --
8 additional time, if any, is needed by Mr. Hanlon to
9 complete his response.
10 MR. GOOCH: All right. I will -- My associate
11 will be here on the 30th. I will be going fishing with
12 my son in Florida on the 30th.
13 MR. BRODY: Are existing subpoenas to have a new
14 (Unintelligible)?
15 THE COURT: I'm sorry, Mr. Brody?
16 MR. BRODY: Is this existing subpoenas that
17 haven't been responded to, are those also stayed?
18 THE COURT: Correct. They are also stayed.
19 MR. BRODY: Thank you.
20 MR. McARDLE: And depositions are stayed?
21 THE COURT: I'm sorry?
22 MR. McARDLE: And depositions are stayed?
23 THE COURT: Yes. All discovery means all
24 discovery.

1 MR. McARDLE: I understand you were focusing on
2 them. I just want to make sure Lukasik has got a
3 separate kind of sub case is also barred by all this.

4 THE COURT: Anything under this docket number
5 involving these parties --

6 MR. McARDLE: I understand now.

7 THE COURT: -- and these issues is -- in discovery
8 is stayed.

9 MR. McARDLE: Okay.

10 THE COURT: Nobody does nothing until this issue
11 of standing is resolved.

12 MR. GOOCH: I would ask --

13 THE COURT: Do I make myself clear?

14 MR. GOOCH: One more thing -- I do, Judge.

15 You do.

16 One more thing: I would ask Mr. Hanlon be
17 required to notify anyone he's issued a subpoena to that
18 they're not to comply with it pending further order of
19 Court.

20 THE COURT: I haven't seen anything -- anything in
21 this case to indicate at this time -- see anything in
22 this case that his notice to you is defective.

23 MR. GOOCH: Well, Judge, the only reason I ask you
24 that is the Exhibit C I attached Mr. Hanlon's statement

1 was that he would be issuing a series of subpoenas in
2 the next few days. That was last week.

3 MR. HANLON: May I address that, Judge?

4 MR. GOOCH: So if he hasn't, that's great.

5 MR. HANLON: I haven't issued any.

6 MR. GOOCH: Okay. Well we don't have an issue.

7 MR. HANLON: I issued one on Friday.

8 THE COURT: All provisions of the Code of Civil
9 Procedure and Supreme Court Rule regarding notice of the
10 issuance of subpoena will be strictly followed.

11 Put that in the order.

12 MR. GOOCH: Yes, sir.

13 THE COURT: What else have we got? A rule?

14 MR. McARDLE: Yeah. The next big item is the
15 amended petition for rule to show cause filed by
16 Lukasik. And we're here for an evidentiary hearing.

17 And Lutzow has filed a motion.

18 MR. KELLY: Your Honor, I filed a motion to
19 strike.

20 Judge, this amended petition is a fishing
21 expedition purely. However, that being said, the --
22 we'd move to strike for a couple of reasons. First, on
23 Paragraph 11 of their petition it's clear what they're
24 looking -- they're looking for a couple things. But

1 specifically Lukasik now seeks an order requiring
2 production of all documents requested in Exhibit B
3 providing her access to all videos, audio recordings
4 obtained by the -- in that camera.

5 Judge, the purpose of a rule to show cause is
6 to hold someone in contempt. I'm preaching to the
7 choir, I know. But the petition for rule is a method to
8 notify the Court that an order may have been violated
9 and then to have a hearing on that, not to produce
10 documents. That's number one.

11 Number two, they're asking for a hearing on
12 this basically to, I think, harass certain individuals
13 and to bring forth evidence literally for another
14 matter.

15 This petition for rule could be decided upon
16 the verified petition and the verified answer at this
17 point because we did provide answers or just on their
18 verified petition. There needs to be no evidentiary
19 hearing.

20 This thing should be stricken because they're
21 seeking this to produce records which have already been
22 produced. And Mr. McArdle, standing next to me, he
23 knows that they've been produced.

24 In addition, they're seeking a rule regarding

1 the -- a camera, which we have stated in here was
2 installed prior to the entry of this Court's order of
3 July 14th.

4 And lastly, Judge, the order needs to be
5 clear and ambiguous. There's nothing in the order
6 dealing with cameras. The only thing Mr. Lutzow was
7 required to do was to notify the Board and ask the Board
8 to provide rooms to the clerk. That has happened. It's
9 not the room they're complaining of, but she was
10 provided those rooms. But, you know, they're not
11 complaining he failed to notify the Board. That's his
12 duty. But they don't complain or even argue that within
13 their petition. That's why I'm asking to have this
14 thing stricken. And, Judge, that's my -- the sum of my
15 argument.

16 THE COURT: Mr. McArdle?

17 MR. McARDLE: Just two points: On the document
18 production, I asked for production of the -- for access
19 to the video which is -- was in the cloud, and what I
20 received was one clip that we have here, about
21 30 minutes worth of one day, and that's all I received
22 out of all the recordings that were taken by that
23 camera. And I want to know why more wasn't produced.

24 The second point, which is more important, is

1 that the -- the camera that was installed allegedly by
2 Lutzow or his employee was put there and what the
3 response says in his -- in its motion to strike is it
4 says the basement storage room which the clerk found the
5 security camera was never turned over to the clerk. The
6 room contained records belonging to the supervisor,
7 general assistants, Township records as well.

8 The clerk at some time in July without notice
9 changed the locks. The clerk had knowledge that the
10 camera was installed and that the timing of the camera
11 was installed before the order was entered. All of
12 those are questions of fact not in the record. He
13 alleges them in his verified pleading, but we need to
14 cross-examine that, and that's why I'm requesting a
15 hearing. I think it's a brief hearing.

16 THE COURT: What is it -- What order has been
17 violated and how has it been violated?

18 MR. McARDLE: The order is of July 14th. The
19 order required that Lukasik --

20 THE COURT: The preliminary injunction?

21 MR. McARDLE: Pardon?

22 THE COURT: The preliminary injunction order?

23 MR. McARDLE: Yeah. The order provides in
24 Paragraph 3 that she's to be provided with a records

1 room to which only she and her designees shall have
2 access.

3 And allegedly on my allegation is that Lutzow
4 and Provenzano installed the camera providing them
5 virtual access is the way I phrase it to listen and view
6 activity of persons in the locked and stored secured
7 room. She locked the room with her own key, her own
8 access, and he puts a camera in there, listens to
9 everything that's going on in there and watches it. And
10 that's a violation of the intent of the order if not the
11 literal violation. That's the allegation.

12 THE COURT: What is the intent of the order?

13 MR. McARDLE: To provide her with sole access to
14 the records.

15 THE COURT: And that's your proof?

16 MR. McARDLE: Well, that's (Unintelligible).

17 THE COURT: That will be your proof?

18 MR. McARDLE: Pardon?

19 THE COURT: Will that be your proof?

20 MR. McARDLE: That would be the proof.

21 THE COURT: You want to stand on those statements,
22 or do you want me to listen to it?

23 Call your first witness.

24 MR. McARDLE: I will.

1 MR. HANLON: Judge, before we --

2 MR. KELLY: Judge --

3 MR. HANLON: -- have a -- Mr. McArdle had noticed
4 Mr. Gasser to be here to testify today in this matter,
5 and I believe that the scope of the examination of the
6 respective witnesses may run afoul of potential other
7 orders and matters that ought not to be public.

8 And I'd like to ask for a short pretrial just
9 for the purposes of limiting testimony to things that
10 are strictly tied to (Unintelligible).

11 MR. McARDLE: I don't (Unintelligible) calling
12 Gasser, Judge.

13 THE COURT: All right.

14 MR. HANLON: He is not calling him?

15 THE COURT: You -- You won't call Gasser?

16 MR. McARDLE: I don't know. I haven't decided.

17 THE COURT: You won't call Gasser without there
18 being an in camera discussion?

19 MR. HANLON: That would be fine.

20 MR. KELLY: Judge, before we leave the bench,
21 could we just be clear for the record? My motion to
22 strike is effectively being denied.

23 THE COURT: Not necessarily. I'm taking it with
24 the case.

1 MR. KELLY: Okay. Secondly, just for the record,
2 a rule has not issued as of yet. This is basically --

3 THE COURT: This is -- This is basically to
4 determine whether one issues or not.

5 MR. KELLY: Thank you, Judge. That's -- I just
6 want to make that clear.

7 THE COURT: Now, Mr. McArdle, the relief you're
8 asking for is a finding of contempt?

9 MR. McARDLE: Correct.

10 THE COURT: Indirect civil contempt?

11 MR. McARDLE: Yes.

12 THE COURT: Or indirect criminal contempt?

13 MR. McARDLE: Civil.

14 THE COURT: Civil?

15 MR. McARDLE: Yeah, it was amended in the
16 petition.

17 THE COURT: Just so we know.

18 MR. McARDLE: Your Honor, my first witness would
19 be Charles Lutzow, party in the case pursuant to 202
20 (Unintelligible).

21 THE COURT: Mr. Lutzow, would you come forward,
22 please?

23 MR. PROSSNITZ: Your Honor, may I approach?

24 THE COURT: You may.

1 MR. PROSSNITZ: Good morning, your Honor. Philip
2 /PROLS /TPHEUTS /-FPLTS I would ask to file an
3 appearance on behalf of Mr. Lutzow at this time and I'm
4 here -- there's potential questions regarding the
5 installation of a video camera that has audio and video
6 capability. There's some concern it might constitute a
7 violation of the eaves /TKROFG statute, a felony. And
8 if any questions during these proceedings touch upon
9 information that is pertinent to that or might lead to
10 that, I would -- I will be asserting my client's Fifth
11 Amendment privilege (Unintelligible).

12 THE COURT: Then raise the objection.

13 MR. PROSSNITZ: Thank you, your Honor.

14 THE COURT: At the appropriate time.

15 MR. PROSSNITZ: Thank you, Judge.

16 THE COURT: Mr. Lutzow, raise your right hand and
17 be sworn.

18 THE WITNESS: Yes, sir.

19 (WHEREUPON, the witness was
20 duly sworn.)

21 THE BAILIFF: Okay. Sir, follow me. Just right
22 around here, please.

23 THE WITNESS: Thank you.

24 THE BAILIFF: You can have a seat. Make sure you

1 THE WITNESS: Thank you.

2 THE BAILIFF: You can have a seat. Make sure you
3 talk into the microphone.

4 THE WITNESS: Okay.

5 THE COURT: Counsel, you may proceed.
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10 CHARLES LUTZOW,

11 having been called as a witness herein, after having
12 been first duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY: MR. McARDLE

16 Q. Would you state your name?

17 A. Charles Lutzow.

18 THE COURT: No. Speak up.

19 THE WITNESS: Charles Lutzow.

20 BY MR. McARDLE:

21 Q. And you currently hold the elected position
22 of Algonquin Township supervisor, correct?

23 A. Yes, sir.

24 Q. You were elected in the spring of 2017?

1 A. May 15th.

2 Q. And you are a party to this current lawsuit
3 filed by Andrew Gasser, docket number 17 CH 435,
4 correct?

5 A. Yes.

6 Q. Your attorney is James Kelly?

7 A. Yes.

8 Q. One of your employee's names is Ryan
9 Provenzano, correct?

10 A. Correct.

11 Q. What are your duties as the Township
12 supervisor in general?

13 A. In general, I'm the treasurer of the Township
14 as well as in charge of general assistance as well as
15 managing the office, the main office of the building,
16 overall operations of the Township.

17 Q. And is Ryan Provenzano your employee of the
18 supervisor's office?

19 A. Yes, sir.

20 Q. You're his supervisor?

21 A. Yes.

22 Q. And if you -- I handed you a book up there, a
23 book of exhibits that have numbers on there?

24 A. Uhm-hmm.

1 Q. If you turn to Exhibit Number 3, that's an
2 order that was entered on July 14th, 2017.

3 Do you recognize it?

4 A. Yes, sir.

5 Q. In Paragraph 3 I'm going to direct your
6 attention to that.

7 And that paragraph provides that you shall
8 recommend to the Board of Trustees in Algonquin Township
9 that it provide Lukasik with a building or area within
10 one or more of the Township buildings to reasonably
11 secure Township records within the jurisdiction to which
12 only the clerk and her designee shall have access,
13 correct?

14 A. Yes.

15 Q. Following the entry of that order, did you,
16 in fact, obtain a secure room for the Township clerk,
17 Karen Lukasik, to keep some of her records?

18 A. Yes.

19 Q. Is one of those rooms located in the bottom
20 floor of the Algonquin Township principal office
21 building?

22 A. No.

23 Q. Is there a records room in the Algonquin
24 Township principal office building?

1 A. Yes.

2 Q. Where?

3 A. Downstairs behind the meeting room.

4 Q. Is that the bottom floor?

5 A. Yes.

6 Q. After -- after -- Strike that.

7 Yeah, after July 14th, 2017, you directed
8 Ryan Provenzano, your employee, to install a Nest camera
9 and audio camera in that storage room, correct?

10 MR. PROSSNITZ: Objection.

11 Judge, on behalf of my client I would assert
12 his Fifth Amendment privilege against
13 self-incrimination.

14 THE COURT: Mr. McArdle?

15 MR. McARDLE: I don't have a response to that,
16 Judge.

17 THE COURT: The objection's sustained.

18 MR. GUMMERSON: Judge, for the record I think
19 actually is he has to assert it himself as far as the
20 actual Fifth Amendment for the record.

21 THE COURT: That would be in a Grand Jury
22 proceeding.

23 Are you asserting your Fifth Amendment
24 rights, Mr. Lutzow?

1 THE WITNESS: Yes, your Honor.

2 MR. McARDLE: Did that pick up what I just said do
3 you think?

4 A VOICE: Yeah (Unintelligible).

5 MR. McARDLE: Oh, okay. Sorry.

6 A VOICE: Yeah.

7 THE COURT: The objection's sustained.

8 BY MR. McARDLE:

9 Q. At no time did you disclose to Lukasik that
10 the video camera was being installed, correct?

11 MR. PROSSNITZ: Objection.

12 I would advise my client that he should
13 assert his Fifth Amendment privilege against
14 self-incrimination.

15 THE COURT: Mr. Lutzow, do you intend to stand on
16 your constitutional right against self-incrimination?

17 THE WITNESS: Yes, your Honor.

18 MR. McARDLE: And my final question --

19 THE COURT: Objection sustained.

20 BY MR. McARDLE:

21 Q. At no time did you disclose to Lukasik's
22 husband or her son that the videocam was being
23 installed, correct?

24 MR. PROSSNITZ: Objection.

1 The same statement to my client.

2 THE COURT: Are you standing on your Fifth
3 Amendment right not to testify?

4 THE WITNESS: Yes, your Honor.

5 THE COURT: The objection's stained.

6 MR. McARDLE: That's all I have.

7 THE COURT: (Unintelligible).

8 MR. McARDLE: That's all I have.

9 THE COURT: You may stand down.

10 Wait a minute.

11 Are there any questions -- cross-examination?

12 Mr. Kelly?

13 MR. KELLY: No, your Honor.

14 THE COURT: Mr. Prossnitz?

15 MR. PROSSNITZ: No. Thank you, your Honor.

16 (WHEREUPON, the witness was excused.)

17 MR. McARDLE: My next witness, your Honor, would
18 be Ryan Provenzano pursuant to Section 2-1102 of the
19 Code of Civil Procedure.

20 THE COURT: Who?

21 MR. McARDLE: Ryan Provenzano.

22 THE COURT: Mr. Provenzano?

23 MR. McARDLE: I take it he's not being produced
24 today, right, Jim?

1 MR. KELLY: Your Honor, if I may, your Honor, Mr.
2 McArdle has tendered 237 requests to produce an employee
3 of the Township Ryan Provenzano that was submitted to
4 the supervisor, Mr. Lutzow.

5 Mr. Lutzow advised him to be here today. You
6 know, I don't -- I can't speak for why he's not here at
7 this point.

8 I believe you heard Miss Ambroziak testify
9 that she was -- state she was representing him.

10 MR. McARDLE: Do -- well -- (Unintelligible).

11 THE COURT: Now wait a minute.

12 MR. McARDLE: Is he coming?

13 Pardon?

14 THE COURT: We have no witness.

15 MR. McARDLE: Well, right. But we have his
16 attorney here.

17 Is he showing up?

18 Maybe he's late or something.

19 MS. AMBROZIAK: He's available, but he's not going
20 to testify, and he's not a party to this case. The
21 Township is not a party to this case.

22 MR. McARDLE: So he's not showing up to appear?

23 THE COURT: Mr. McArdle, send it to me.

24 MS. AMBROZIAK: He's not been properly --

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MR. McARDLE: I'm sorry.

THE COURT: I'm not really a bystander here.

MR. McARDLE: Right.

THE COURT: Do you have the witness?

Is the witness here?

MR. McARDLE: No.

THE COURT: Call your next.

MR. McARDLE: Karen Lukasik.

THE COURT: Raise your right hand to be sworn.

(WHEREUPON, the witness was

duly sworn.)

THE BAILIFF: Have a seat.

Make sure you talk into the mike.

THE WITNESS: Okay.

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KAREN LUKASIK,
having been called as a witness herein, after having
been first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY: MR. McARDLE

Q. State your name, please?

A. Karen Lukasik.

Q. Describe the elected position

(Unintelligible)?

THE COURT: Will you spell your last name for the
record, please?

THE WITNESS: L-u-k-a-s-i-k.

BY MR. McARDLE:

Q. Describe the elected position you hold with
Algonquin Township?

A. I'm the clerk.

Q. And were you elected in the spring of 2017 as
well?

A. Yes.

Q. Prior to July 14th, 2017, when Exhibit 3, the
court order, was entered regarding a preliminary
injunction, please describe your knowledge of the
security cameras at the Township -- the general location

1 and where they were -- number of cameras?

2 A. I knew there were security cameras outside on
3 the premises.

4 MR. KELLY: Objection.

5 Foundation.

6 THE COURT: Overruled.

7 You may answer.

8 THE WITNESS: What am I answering?

9 Your question?

10 MR. McARDLE: Right.

11 THE WITNESS: The security cameras outside, I
12 don't know how many exactly, but I know there's cameras
13 around the premises outside.

14 The only one I'm aware of inside was the --
15 is a camera -- There used to be a camera that viewed
16 down the hallway by the boardroom.

17 BY MR. McARDLE:

18 Q. After July 14, 2017, when the Court entered
19 its preliminary injunction order, did you have occasion
20 to notice any additional cameras at the Township?

21 A. No.

22 I'm sorry? Ask that again?

23 Q. After July 14th, 2017 --

24 A. Yes, I did.

1 Q. Okay.

2 Where did you notice that camera, and tell us

3 about it?

4 A. I -- I was in the lower records room.

5 Q. Do you know when that was?

6 A. Yes. I discovered a hidden camera -- well,

7 it looked hidden -- on August 25th.

8 Q. Were you with anyone?

9 A. Yes.

10 Q. Where were you again?

11 A. I was in the lower records room, which I

12 assumed there were records there.

13 Q. When you were downstairs, was the records

14 room occupied, or was it locked and empty?

15 What was the condition of it?

16 A. It was locked.

17 Q. Okay.

18 And who were you with?

19 A. I was with our IT person, Keith.

20 Q. Keith what?

21 A. Keith.

22 Q. Okay.

23 A. Sadata (Phonetic)? I'm sorry.

24 Q. You're not sure of his last name?

1 A. I'm not sure of his last name.

2 Q. Okay.

3 And what was the -- Strike that.

4 What -- What happened next?

5 A. I went down to show Keith the -- He was going
6 to get to scanner for me.

7 I was trying to show him how many records I
8 had so that he could determine the type of scanner I
9 would need. And when we walked into the room, he was
10 looking around, and he looked up and saw the camera and
11 asked me what that was. And I said it was --

12 Q. Where -- where -- where was the -- How big is
13 the room?

14 A. I would say maybe eight by eight? Ten by
15 ten?

16 Q. Okay.

17 So it's a relatively small room?

18 A. Uhm-hmm.

19 Q. And there are shelves in there?

20 A. There are -- There are two walls that have
21 shelves all the way to the ceiling.

22 Q. Uh-huh.

23 A. And then there's two other walls that are not
24 occupied with shelving. And there's an opening at the

1 top that goes -- like a drop ceiling that goes into
2 another room that you walk into that has --

3 Q. So the ceiling is exposed?

4 A. Yes, about maybe six inches of it is exposed.
5 Maybe a foot.

6 Q. Okay.

7 And describe where the camera was located?

8 A. So the camera was up near the top of the
9 ceiling on a rafter.

10 Q. I'm going to show you what I have marked as
11 ~~Lukasik Exhibit Number 12~~ and ask you if you can
12 identify this?

13 A. So this is the -- This is the camera that I
14 found or that we found that our -- that Keith noticed.
15 It's a Nest camera he said.

16 It was -- And I guess it has a magnetic
17 capability. It was stuck onto the rafter that is metal.
18 And then a cord was going into the other room down --
19 down the drop ceiling.

20 Q. Hold on. I didn't -- if you -- if you take a
21 look at the exhibits --

22 THE COURT: What are you referring -- What are you
23 referring to now?

24 THE WITNESS: This is the camera that I found.

1 THE COURT: All right.

2 BY MR. McARDLE:

3 Q. If you take a look at the exhibit book I gave
4 you, if you turn to Exhibit Number 6?

5 A. Okay.

6 Q. Can you identify what's in that photograph?

7 A. Yes. It's the same -- It's the same Nest
8 camera.

9 Q. So what we see here is the -- with the white
10 wall at the bottom half of the photo?

11 A. Correct. That -- that's the -- the wall.

12 And then it goes -- Behind that wall is another entry
13 room that there's (Unintelligible) supplies and things
14 like that for the public that comes in.

15 Q. And that camera that we're looking at in
16 Exhibit Number 6 is the same camera that we're looking
17 at in Exhibit Number 12?

18 A. Yes.

19 Q. And does the photograph truly, fairly and
20 accurately depict the position and the camera in place
21 as you saw it on August 25th, 2017 --

22 A. Yes.

23 Q. -- with Keith?

24 Were you surprised by the camera's location?

1 A. Yes.

2 Q. And the room was locked when you entered the
3 room, correct?

4 A. Correct.

5 Q. Did you change that lock beforehand?
6 Was that your lock that you put on?

7 A. Yes.

8 Q. When did you change those locks?

9 A. August 11th.

10 Q. And who had keys to the lock?

11 A. Only me.

12 Q. Did you change the locks in order to secure
13 that room for your records as the Township clerk
14 pursuant to the Court's order on July 14, 2017?

15 A. Yes.

16 Q. Did you have any knowledge of the camera
17 being located in that room prior to your finding it on
18 August 25th, 2017?

19 A. No.

20 Q. After you and Keith saw the camera in that
21 room, what did you do?

22 A. Well, we found the camera. And then we went
23 into the other room to see where the white cord that was
24 coming out of the camera went, and it was hidden into

1 the drop ceiling of the other room. And then the cord
2 was coming out of the drop ceiling behind the decorative
3 item like a plant or something on top of the shelf -- a
4 holiday decoration -- and then it -- the cord then
5 plugged into an extension cord that was dragged down
6 behind the shelving unit in the other room prior to the
7 locked room.

8 Q. Was there any materials in that side room
9 hiding the wiring of the camera?

10 A. Yes. There were shelving units hiding it.

11 Q. Was there anything on the shelf?

12 A. Computers, things like that that belonged to
13 the cord.

14 Q. I show you the computer thumb drive, Exhibit
15 Number 11 in the exhibit book.

16 Have you seen that video before today?

17 A. Yes.

18 Q. What does the video depict?

19 A. It depicts my son and my husband and me in
20 the records room.

21 Q. Does the video truly, fairly and accurately
22 depict you, your husband and your son?

23 A. Yes.

24 Q. How old is your son?

1 A. 13.
2 Q. Does the video also have audio associated
3 with it?

4 A. Yes, it does.

5 Q. Do you recognize on the recording your voice,
6 the voice of your husband and the voice of your son?

7 A. Yes.

8 Q. Prior to August 25th -- Strike that.
9 Well, after August -- I can't remember the
10 date.

11 A. 11th.

12 Q. 20th?
13 When did you see the camera?

14 A. 25th.

15 Q. 25th. After August 25th, did you have
16 occasion to go back to the room with Keith?

17 A. Yes, I did.

18 Q. When?

19 A. On August 30th I asked him to come to the
20 Township and remove the camera.

21 Q. So what happened on that day?

22 A. So he came in. He brought a ladder with him.
23 He removed the camera and so that he could look at it
24 and tell me the details of it, if it went to our server,

1 where it went exactly and what it was.

2 Q. And the camera you removed is Exhibit

3 Number 12, correct?

4 A. Yes.

5 MR. McARDLE: That's all I have.

6 Wait. Wait. Hold on.

7 THE COURT: Mr. Kelly, cross?

8 MR. KELLY: Yes, Judge.

9

10

11

CROSS-EXAMINATION

12

BY: MR. KELLY

13

14 Q. Miss Lukasik, you had just testified as to
15 this cable that came out of the basement records storage
16 room.

17

18 Was that a power cable that you were
19 describing?

20

A. It was an extension cord, yes.

21

22 Q. Okay.

23

24 Now, you had also testified that you had no
25 knowledge of this camera that you saw prior to

26

27 August 25th, correct?

28

A. Correct.

29

30 Q. Okay.

1 Now, let me ask you if you can recall a
2 meeting that took place between Mr. McArdle, Mr. Lutzow
3 and yourself and I was also present on July 27th -- or
4 strike that -- on June 27, 2017, at the Township offices
5 at approximately 7:00 p.m.

6 Do you recall a meeting between all of us at
7 the building?

8 A. I do recall.

9 Q. Okay.

10 A. For some reason I had June 24th.

11 Q. Okay.

12 A. But I knew my days were off.

13 Q. Okay.

14 Now, at that -- The purpose of that meeting
15 was to identify where records were located in the
16 Township on the entire Township campus, correct?

17 A. Correct.

18 Q. Okay.

19 Now --

20 MR. KELLY: Your Honor, may I approach the
21 witness?

22 THE COURT: You may.

23 BY MR. KELLY:

24 Q. And let me show you what I have marked as

1 Exhibit A for Identification. And this is a document
2 that is an aerial view of the Township campus on
3 Northwest Highway.

4 Is that fair to say?

5 A. Yes.

6 Q. Okay.

7 Now --

8 MR. KELLY: Your Honor, I spoke to Mr. McArdle.
9 He has no objection if I tender this exhibit that's
10 marked as Exhibit A for Identification to the Court.

11 THE COURT: Is that correct?

12 MR. McARDLE: Correct.

13 THE COURT: It's admitted.

14 BY MR. KELLY:

15 Q. Now, on -- I'd just like to be -- be clear
16 about a couple of things.

17 At the bottom of that -- the photo, there is
18 a little flag that says building one town hall.

19 So that's the main Township building,
20 correct?

21 A. Correct.

22 Q. Okay.

23 And the basement room that you're talking
24 about is in -- where some records are stored is in that

1 building, correct?

2 A. Correct.

3 Q. And that room was called the overflow storage
4 room, right?

5 A. Well, it became the overflow records room
6 after the items that were in there were removed so that
7 we would have more room for records.

8 Q. Okay.

9 So -- and the -- That particular room, you
10 went to with Mr. McArdle and Mr. Lutzow on the 24 -- or
11 24th or 27th of June to look at as well as you looked at
12 records which were in Mr. Lutzow's office, correct?

13 A. Correct. You were with us -- went to all of
14 the rooms --

15 Q. Okay. Right. Okay.

16 A. -- that had records.

17 Q. Now I'm asking the questions.

18 A. Sorry.

19 Q. So just wait for your question.

20 Now, when you looked at the records in Mr.
21 Lutzow's office, you had already received a key to that
22 office, right?

23 A. Actually, let me be more specific. Mr.
24 Lutzow's office -- the records were moved out of Mr..

1 Lutzow's private office into the front office.

2 MR. KELLY: Judge, I'd ask --

3 THE WITNESS: I'm trying to (Unintelligible) to
4 which office.

5 MR. KELLY: I'd ask that we strike that as
6 nonresponsive.

7 THE COURT: The objection's sustained.

8 You need to repeat the question.

9 MR. KELLY: Yes.

10 BY MR. KELLY:

11 Q. Mr. Lutzow's office is comprised of two
12 rooms, correct?

13 A. Correct.

14 Q. That's the supervisor's office.

15 And in the front office it's where his
16 administrative staff is. There are file cabinets, and
17 there are records in that room, correct?

18 A. There -- There were file cabinets there, yes,
19 at that time.

20 Q. Okay. Okay.

21 And we're talking about the day that we met
22 at the Township in June, okay, just so we're all on the
23 same sheet of music.

24 A. Okay.

1 Q. And the second room, the inner office,
2 there's a desk for the supervisor and there's some
3 additional file cabinets, correct, at that time?

4 A. Correct.

5 Q. Okay.

6 And you had access to both of those rooms,
7 correct, prior to the date of our meeting?

8 A. No, I did not.

9 Q. Okay.

10 A. I did not have -- I did not have access to
11 Mr. Lutzow's private office.

12 Q. Okay.

13 However, you had access to that front office
14 where there were records.

15 And there were financial records of the
16 Township in that front office, correct?

17 MR. McARDLE: Objection.

18 Relevance.

19 THE COURT: Sustained.

20 BY MR. KELLY:

21 Q. Now, following the meeting that we had --
22 Strike that.

23 Following meeting in the upstairs -- And we
24 looked also in the clerk's office, correct?

1 A. Correct.

2 Q. Okay.

3 And we walked around the building.

4 Mr. Gasser's office was locked, correct?

5 A. Correct.

6 Q. And you didn't have access to that office at
7 all, right?

8 A. No, I didn't.

9 MR. McARDLE: Objection.

10 Relevance to this line of questioning.

11 MR. KELLY: Foundational, Judge.

12 THE COURT: Overruled.

13 BY MR. KELLY:

14 Q. After that we went into the basement, and we
15 looked at this overflow room.

16 And in that room it -- where some records
17 were stored, it also has two separate rooms, correct?

18 A. It has -- No. There's -- You walk into a
19 room that's adjacent to the records room. There was
20 also at that time like shower toilets, canes, walkers.
21 It was full of those equipment -- that equipment.

22 And it was discussed that maybe we should
23 move that out of there to make the records room bigger
24 so that all of these other records could be stored

1 there.

2 Q. Okay. Okay.

3 A. The next room adjacent to it is just like a
4 room that the public can have access to to get their
5 (Unintelligible) equipment and things like that out off
6 it.

7 Q. Okay.

8 And that's a locked room, correct?

9 Both of those rooms are locked, right?

10 A. Both of those rooms are locked.

11 Q. Okay.

12 And the inner room, there's already records
13 that are stored there, right, for the Township, correct?

14 A. There were prior, yes, there were.

15 Q. Okay.

16 And those records consisted of general
17 assistance records. They consisted of Township road
18 district records and Township records?

19 A. Correct.

20 Q. Okay.

21 Now, while you and Mr. McArdle were in that
22 room, you and Mr. McArdle and Mr. Lutzow had a
23 discussion with regard to installing a security camera
24 in that room to prevent the theft of any of the records,

1 correct?

2 A. I do not recall that.

3 Q. Okay.

4 A. I recall that in our meeting --

5 Q. Well, if you don't recall, you don't recall.

6 Now, subsequent to that or after that
7 meeting, the Court order of July 14th was entered,
8 correct?

9 A. Correct.

10 Q. Okay.

11 And shortly thereafter -- let's say
12 July 27th -- the supervisor offered up to you two rooms
13 in building -- three rooms actually in building six,
14 correct?

15 A. Two rooms in building six downstairs.

16 Q. Okay.

17 But he initially offered in his e-mail to
18 your attorney three rooms, two offices --

19 MR. McARDLE: Object to the relevance.

20 BY MR. KELLY:

21 Q. Two offices --

22 THE COURT: Overruled.

23 MR. KELLY: Sorry, Judge.

24 THE COURT: Go ahead.

1 MR. KELLY: Okay.

2 BY MR. KELLY:

3 Q. Two offices upstairs, and those were climate
4 controlled rooms, correct?

5 A. Correct.

6 Q. Okay.

7 And then he also offered an office
8 downstairs, correct, which is merely an office?

9 A. Correct.

10 Q. Okay. All right.

11 And you have -- And those are large rooms,
12 right?

13 A. The office is about the same size as the
14 overflow records room.

15 The other two rooms, the one was used as a
16 wellness room, so there should be plenty of room for the
17 records to be moved.

18 Q. All right.

19 A. But there still are records in the bus depot.

20 MR. KELLY: Judge, I would just ask to strike
21 that. It's nonresponsive.

22 THE COURT: The objection is overruled.

23 The answer stands.

24 MR. KELLY: Okay.

1 BY MR. KELLY:

2 Q. That room was probably -- Both of those rooms
3 were probably 30 by 30 foot large, correct?

4 A. The one next to the wellness room is more of
5 a long, narrow room. I would say maybe 20 by 20.

6 Q. Okay.

7 A. It's a longer, thinner room.

8 Q. And both of them have ceilings that are
9 probably 15 feet high to 20 feet high, correct?

10 A. Maybe -- Maybe. I -- I wouldn't know
11 exactly. It's kind of open at the top.

12 Q. Okay.

13 A. I mean, there -- It's just a normal room --

14 Q. Okay.

15 A. -- in my opinion.

16 They're not that much bigger.

17 Q. Okay.

18 Now, Mr. Lutzow never told you after the
19 meeting on the end of June we'll call it with Mr.
20 McArdle, yourself and I that you had control over a room
21 in the basement, correct?

22 A. He never told me I had control over it?

23 Q. Yes.

24 A. There was never any discussion about any

1 control over any of the rooms.

2 Q. Okay.

3 A. Very little discussion with Mr. Lutzow.

4 Q. Okay.

5 And you never called him prior to changing
6 locks on that room, right?

7 A. Well, per order I --

8 Q. Well, my question is you never called him?

9 A. No, I did not.

10 Q. Okay.

11 A. I was going by the court order.

12 Q. Well, no.

13 Well, did you ever send him an e-mail telling
14 him that you wanted to change the locks on those rooms?

15 A. No. I was told that I was to take custody of
16 the records.

17 Q. (Unintelligible)?

18 A. So I changed the locks.

19 Q. Who told you that?

20 THE COURT: Wait a minute. Wait a minute. Wait a
21 minute.

22 Were you ever told -- What was the question?

23 MR. KELLY: Judge, my question was was she ever
24 told she could have control over that room.

1 THE COURT: Yes or no?

2 THE WITNESS: Yes.

3 BY MR. KELLY:

4 Q. By who?

5 A. The order.

6 MR. KELLY: One moment, Judge.

7 Judge, may I approach the witness?

8 THE COURT: You may.

9 MR. KELLY: Thank you, Judge. Judge I have to
10 apologize. I don't know in Mr. McArdle's book which --

11 MR. McARDLE: It's Exhibit 3, Counsel.

12 MR. KELLY: It is?

13 MR. McARDLE: Exhibit 3.

14 MR. KELLY: It's Exhibit 3. I have a copy of the
15 same order. We'll call it Exhibit 3 in that case.

16 Thank you.

17 BY MR. KELLY:

18 Q. Let me direct your attention to Paragraph 3,
19 please. Do you see Paragraph 3?

20 A. Yes.

21 Q. Okay.

22 Nowhere in Paragraph 3 does this order say
23 that you have control over a basement storage room in
24 building one, does it? That's --

1 A. Well, there are records in there, and it says
2 that I was to secure the records within my jurisdiction.
3 Q. Okay.
4 A. Which I only have access to.
5 Q. But nowhere -- Nowhere in there does it tell
6 you that you have that room, correct?
7 A. Well, there's records in that room so --
8 Q. Okay.
9 That's right.
10 A. That's (Unintelligible).
11 Q. There's also records for general assistance,
12 correct --
13 A. Correct.
14 Q. -- in that room?
15 A. There are.
16 Q. You have absolutely no authority to seize
17 control of general assistance records, correct?
18 MR. McARDLE: Objection.
19 Those are legal arguments, Judge.
20 THE COURT: Sustained.
21 MR. KELLY: She knows her job as a clerk, Judge.
22 Does she have --
23 THE COURT: The objection is sustained.
24 MR. KELLY: Okay.

1 BY MR. KELLY:

2 Q. But you see, regardless of anything else, you
3 changed the locks, and you knew those general assistance
4 records were in the room in the basement of building
5 one, correct?

6 MR. McARDLE: Objection.

7 Relevance. (Unintelligible).

8 THE COURT: Overruled.

9 MR. KELLY: Okay.

10 THE COURT: You can answer the question if you
11 understand it.

12 THE WITNESS: I knew there were records in there,
13 and I knew I needed to secure the records.

14 BY MR. KELLY:

15 Q. Okay.

16 Now, in the -- I'd just like to get one thing
17 straight. You testified that you changed the locks on
18 the basement storage room on August 11th.

19 Wouldn't it be fair to say that you actually
20 changed the locks on that room on September -- on or
21 about September 1st?

22 A. Well, I changed locks -- There were two or
23 three different buildings that I changed locks on.

24 Q. Okay.

1 Did you request from anyone permission to
2 change locks on any rooms in the Township -- on the
3 Township campus?

4 A. I was going by the court order.

5 And I didn't know I had to ask permission.
6 No one oversees me.

7 Q. Okay.

8 THE COURT: I'll take that as a no.

9 Next question.

10 MR. KELLY: Judge, no further questions. Thank
11 you.

12 THE COURT: Redirect?

13

14

15 REDIRECT EXAMINATION

16 BY: MR. McARDLE.

17 Q. Is exhibit -- Is Exhibit 11, the videotape,
18 the only videotape that's ever been produced to you in
19 this proceeding --

20 MR. KELLY: Objection.

21 Relevance, Judge.

22 THE COURT: Overruled.

23 BY MR. McARDLE:

24 Q. -- by Chuck Lutzow or anyone at the Township?

1 A. Yes.

2 MR. McARDLE: Your Honor, I'd move to admit into
3 Evidence before this witness leaves exhibits 6, the
4 photograph, and 11, the videotape.

5 THE COURT: Any objection?

6 MR. KELLY: Judge, I would object to the admission
7 of videotape. That's absolutely not relevant to the
8 proceeding.

9 The proceeding is strictly based upon the
10 Court's order which -- and I'll read the relevant
11 portion -- Lutzow shall recommend to the Board of
12 Trustees of Algonquin Township that it provide to
13 Lukasik -- and that's it, not Mr. Lutzow -- a building
14 or areas in one of the Township buildings to reasonably
15 secure Township records within her jurisdiction to which
16 only the clerk and her designee shall have access.

17 At this point whether there's a video or not
18 is irrelevant. She's testifying that there was a
19 camera. I see no relevance whatsoever as to whether
20 this video exists or doesn't exist.

21 Access to the room, Judge, we cited in our
22 pleadings means entry to and leaving a room. This has
23 nothing to do with entry to or leaving a room.

24 THE COURT: Mr. McArdle?

1 MR. McARDLE: Judge, I think it's relevant on both
2 points. One is the production. One of the orders of
3 that July 14th document was that all of the videotape be
4 provided to the clerk.

5 And what you'll have if you admit this is one
6 half hour or so of videotape out of what will be
7 testified to a 30-day recording. One clip. That's
8 not -- There's something wrong with the compliance with
9 that order just from a document production, and
10 that's -- for that reason the video is relevant.

11 The second part of it shows the -- the
12 secretness at which the video was produced. You'll see
13 it in the video. I can show it to you now. I didn't
14 see any purpose of it during the hearing if it gets
15 admitted. The foundation's been laid. But if you watch
16 it and you listen to the next witness, you'll see --
17 you'll understand that this camera is totally different
18 in how it's installed and how it's recorded and where
19 it's stored and its access than all the other cameras at
20 the Township. This one camera is totally different
21 under the control of Lutzow.

22 THE COURT: In short the question and response to
23 that statement is so.

24 MR. McARDLE: That's what I have to offer.

1 THE COURT: Why is that contemptuous?

2 MR. McARDLE: I think it's relevant to the
3 violation of the order on the production of a half-hour
4 tape.

5 THE COURT: What's the violation of the order?

6 MR. McARDLE: Pardon?

7 THE COURT: What is the violation of the order?

8 MR. GUMMERSON: Paragraph 1.

9 MR. McARDLE: Yeah, in Paragraph 1, paragraph sub
10 B it says injunction is entered against Gasser
11 prohibiting Gasser and Lutzow from changing Township
12 access keys or codes of buildings.

13 I'm sorry. Hold on.

14 MR. GUMMERSON: (Unintelligible) unfettered access
15 and custody of all records.

16 MR. McARDLE: I'm trying to find -- I'm sorry.

17 THE COURT: Let's move on.

18 Do you have any further questions of this
19 witness?

20 MR. McARDLE: Pardon?

21 THE COURT: Do you have any further questions of
22 this witness?

23 MR. McARDLE: No.

24 Well, until the foundation is -- until the

1 documents are admitted not yet. I'm trying to get the
2 evidence admitted. If it doesn't get admitted, I'll
3 have more questions perhaps.

4 THE COURT: (Unintelligible) exhibit's refused.

5 MR. McARDLE: Can I --

6 THE COURT: Exhibit is refused. It's not
7 relevant.

8 MR. McARDLE: The videotape?

9 THE COURT: Right.

10 MR. McARDLE: What about the photograph?

11 THE COURT: Photographs are in.

12 MR. McARDLE: It's what?

13 THE COURT: The photographs are in.

14 MR. McARDLE: No further questions.

15 (WHEREUPON, the witness was excused.)

16 THE COURT: Call your next.

17 MR. McARDLE: No further witnesses.

18 THE COURT: Tell me why this evidence that we've
19 heard here this morning is evidence of contempt of court
20 of a violation of a court order.

21 MR. McARDLE: I have no argument.

22 THE COURT: You have no what?

23 MR. McARDLE: No argument.

24 THE COURT: Petition for the issuance of a rule to

1 show cause is denied.

2 MR. McARDLE: Thank you.

3 THE COURT: Give me an order.

4 Anything else this morning?

5 MR. GOOCH: Judge, I hope not.

6 MR. KELLY: Judge, can we approach for a moment?

7 THE COURT: You may.

8 If there's going to be an appeal of this
9 order, (Unintelligible) of the exhibits
10 (Unintelligible).

11 MR. McARDLE: Which motion?

12 MR. KELLY: Your Honor, I just have -- You had
13 mentioned and stated early in the bench on the 15th, and
14 most of this case would be reassigned on the 30th.

15 Now, it's my intent to bring a motion before
16 the Court to modify or seek the modification of the
17 injunctive order to clarify it, and I'm just wondering
18 if we can get that before you on the 30th.

19 If not, I'll just proceed.

20 THE COURT: Proceed as if I was the presiding
21 Judge unless you're seeking an order from the Court
22 Administrator changing -- changing the venue.

23 MR. KELLY: Okay, Judge. Thank you.

24 THE COURT: I'll address it when I'm done here,

1 quite frankly.

2 MR. KELLY: Okay.

3 THE COURT: Because that needs -- needs to be done
4 immediately.

5 MR. KELLY: Okay.

6 THE COURT: All right?

7 MR. KELLY: Thank you, Judge.

8 THE COURT: Anything else?

9 MR. KELLY: No, Judge.

10 MR. GOOCH: No, your Honor. Thank you, Judge.

11 (WHEREUPON, the case was continued
12 to November 30, 2017.)

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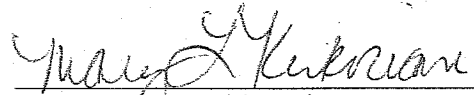
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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF McHENRY)

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IN THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

I, Mary L. Krikorian, an Official Court Reporter of the 22nd Judicial Circuit of Illinois, do hereby certify the foregoing to be a true and accurate transcript of the electronic recording of the proceeding of the above-entitled cause, which recording contained a certification in accordance with rule or administrative order to the best of my ability.



Mary L. Krikorian,
Official Court Reporter
Cert. #084-002172

1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS:

3 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
4 McHENRY COUNTY, ILLINOIS

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6
7 AND, FORASMUCH, THEREFORE, as the matters and
8 things hereinbefore set forth do not otherwise appear on
9 the record, the Petitioner tenders this Report of
10 Proceedings and prays that the same may be signed and
11 sealed by the Judge of this Court before whom said cause
12 was heard.

13 WHICH IS, ACCORDINGLY, DONE, on the day and
14 date said proceedings were heard.

15
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17 _____
18 JUDGE

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