

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

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

5 ANDREW GASSER, ALGONQUIN)
6 TOWNSHIP ROAD)
7 COMMISSIONER,)
8 Plaintiff,)

No. 17 CH 435

9 vs.)

10 KAREN LUKASIK,)
11 INDIVIDUALLY AND IN HER)
12 CAPACITY AS ALGONQUIN)
13 TOWNSHIP CLERK, ANNA MAY)
14 MILLER AND ROBERT MILLER,)
15 Defendants.)

16 -----)
17 KAREN LUKASIK,)
18 Cross-Plaintiff,)

19 vs.)

20 CHARLES A. LUTZOW JR.,)
21 Cross-Defendant,)

22 ANDREW GASSER,)
23 Counter-Defendant.)

24 ELECTRONICALLY RECORDED Report of
Proceedings in the above-entitled cause before the
Honorable MICHAEL T. CALDWELL, Judge of said Court
of McHenry County, Illinois, on the 7th day of
November, 2017, in the McHenry County Government
Center, Woodstock, Illinois.

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APPEARANCES:

ZUKOWSKI ROGERS FLOOD & MCARDLE
BY: MR. DAVID MCARDLE
BY: MR. MARK GUMMERSON

On behalf of Karen Lukasik;

MATUSZEWICH & KELLY
BY: MR. JAMES KELLY

On behalf of Algonquin Township.

1 THE COURT: Andrew Gasser versus Karen
2 Lukasik.

3 MR. MCARDLE: Judge, this is Dave McArdle for
4 Lukasik. As you know, this is up for argument at
5 9:30. We'll be ready as soon as they get here.

6 THE COURT: Okay.

7 (WHEREUPON, the afore-captioned
8 cause was recalled.)

9 THE COURT: Anybody here early on the 9:30
10 call?

11 MR. MCARDLE: Yes. Judge, our argument won't
12 take very long if you want to do it. It's Dave
13 McArdle for Lukasik. Mark Gummerson as well.

14 MR. KELLY: James Kelly on behalf of
15 Algonquin Township.

16 THE COURT: Mr. Gummerson?

17 MR. GUMMERSON: On behalf of Lukasik as well,
18 your Honor. Good morning.

19 THE COURT: Yes?

20 MR. KELLY: Your Honor, this is my motion for
21 a protective order. There was actually two things,
22 just so you know. There was a motion to quash that
23 was also filed with regard to the same security
24 camera which the plaintiff served upon Nest, which

1 is the manufacturer for the camera.

2 Our motion to quash is -- was filed
3 pursuant -- or based upon a 214 --

4 MR. MCARDLE: I don't care about that. We
5 can just agree to that.

6 MR. KELLY: Okay. (Continuing.) -- but based
7 upon a 214 request for documents related to this
8 security camera that was placed in a township
9 storage room. The documents, we had no problem
10 turning --

11 THE COURT: This is a redundant system,
12 right?

13 MR. KELLY: No, it is not.

14 MR. MCARDLE: No.

15 MR. KELLY: No, absolutely not, Judge. It is
16 not. The initial system with the 16 cameras, that
17 is effectively defunct, but the --

18 THE COURT: Why?

19 MR. KELLY: Because when the hard drive was
20 removed, basically there was no capacity to record
21 or store, from my understanding. I'm not in
22 control of that camera. My clients aren't in
23 control of that camera. The road district is. But
24 from my understanding, when that hard drive was

1 removed and given to Mr. Gottemoller, I don't
2 think -- you may know more about it than I do, but
3 it was my understanding it would take an incredible
4 long time to copy that thing and distribute. So I
5 think Mr. Gottemoller has said if you guys want to
6 look at it, you could come and look at it, I think.
7 But I have no need to do that at this point. So
8 it's a separate system, Judge, long and short.

9 So the township purchased this
10 camera, put it in there. We don't have a problem
11 turning over -- the other item they asked for was
12 passwords and access codes. That's what we have a
13 problem with, and that's why I'm seeking a
14 protective order because initially when I spoke to
15 Mr. McArdle before they filed this request, I
16 thought it would be a relatively simple task
17 providing them access. It is not. There is a
18 two-step access procedure to gain access to the
19 thing, and we don't want to give -- and I learned
20 that once you have access, you can delete, modify,
21 turn the thing off, alter any records that are
22 recorded. And then he's asked for it through a 214
23 request, which means we'd give the access codes to
24 everyone, which we don't want to do. So that's why

1 we are asking for the protective order.

2 Further, I'd tell the Court that
3 unfortunately the way Nest is set up, it's a
4 two-step process. So I could give Mr. McArdle the
5 access code right now, and it turns out -- and I
6 just learned this about two weeks ago -- you just
7 can't access it. Then you have to go through
8 another system to access it, so it's a mess. I
9 have no problem giving them the access codes.
10 That's all he's asked for. If he wants it and he
11 wants to work something out with the township so we
12 can access it for the other attorneys, that's fine.
13 But I don't want the access code to be open to the
14 public or to anyone outside this litigation or any
15 of the documents that are (indiscernible) records
16 that are contained within that system. He can have
17 them. The clerk can look at them all day long if
18 she wants to, but we don't want -- and we've
19 already got a protective order, Judge, for the
20 other video recordings.

21 THE COURT: Right.

22 MR. KELLY: We'd like that same type of
23 protection, at least until this litigation is over
24 with. But at this point we don't want to give up

1 an access that anyone can literally use, even
2 though it's a two-step system, to access where they
3 can alter the system. It's not really -- as I
4 said, you can look at the records if you want to.
5 We are just asking for protection at this point.

6 THE COURT: Mr. McArdle?

7 MR. MCARDLE: So the township has, let's say,
8 14 cameras at this time just like that one all over
9 the township. The place is loaded with cameras.
10 It's all served through a local hard drive server
11 handled by the IT consultant for the township on
12 the township property.

13 This guy Lutzow goes out after the
14 lawsuit is filed and buys one of these Nest cameras
15 from Best Buy. It has nothing to do with our --
16 our IT guy doesn't know anything about this camera.
17 No one knows anything about the camera that he
18 bought. He puts it up in the locked records
19 storage room after your Court's entered -- order is
20 entered providing her with the storage room. She
21 gets -- locks the door, puts the records in the
22 room, and the camera is then installed without her
23 knowledge in the room behind the door up in the
24 rafters. We want to see what's on this camera,

1 video and audio. That's all we want to do.

2 I've been trying to get this for
3 over almost two months. This is the request.
4 There's only three documents that are requested,
5 three items of information. And I get his need
6 for -- I don't get his need for confidentiality
7 because the other cameras all have the same type of
8 recordings. I don't know how they are kept on the
9 computer, but they are not under any kind of
10 protective order. I just think it's -- it was
11 bought with township money. It wasn't bought by
12 the -- yeah, it was bought by the supervisor, not
13 by the highway guy.

14 THE COURT: On whose authority was this
15 placed?

16 MR. MCARDLE: Pardon?

17 THE COURT: On whose authority was this
18 placed in the township offices?

19 MR. MCARDLE: Well, we don't know yet, but we
20 assume because the purchase was made by Brian
21 Provenzano, who is an employee of Lutzow, his
22 client, it was made by the supervisor. And then
23 the bill was put -- well, forget -- I don't want to
24 get into things that are evidentiary because it

1 will just end up in a debate, but the point is that
2 he treated this camera separately like it was his
3 own property. And it's not his property. **It's**
4 **township property,** which is held by the clerk.
5 She's the clerk.

6 And I would normally agree to a
7 protective order. Obviously, I'm not going to --
8 you know, I would normally say so long as it's
9 reasonable, we are good with it. I just object to
10 this camera being treated differently than the 14
11 other cameras that the clerk has access to.

12 I don't know anything about the hard
13 drive. I have no idea whether they are working or
14 they are not working. It doesn't matter. They are
15 maintained by our IT guy in the township, and this
16 one should be as well. And we'll treat it like
17 every other camera. If it's subject to some prior
18 court order, that's fine. But this one -- it's an
19 odd camera, but it shouldn't be treated like it's a
20 special camera. **It's township property. It's a**
21 **public building for God's sake.**

22 THE COURT: Mr. Kelly?

23 MR. KELLY: Much of what Mr. McArdle said is
24 just -- well, it is evidentiary information that I

1 think this Court shouldn't be listening to, but the
2 bottom line is is that, first, the clerk
3 unilaterally asserted control over this room,
4 storage room with records that don't belong to her,
5 with other materials in this room. That camera was
6 placed in --

7 THE COURT: Who do they belong to?

8 MR. KELLY: General assistants and the
9 supervisor's office specifically.

10 Now, the Court asked the question
11 who's in control of these facilities. The
12 supervisor is. I mean, the bottom line is the
13 supervisor and the township code specifically
14 provides that the supervisor is essentially the CEO
15 of the township. He's responsible for all of the
16 facilities on that campus of course under certain
17 regulations or restrictions of the board.

18 But regardless, Judge, we are asking
19 just for a protective order. The supervisor can
20 install any type of security system he wants. If
21 it was installed, it was installed well before the
22 clerk asserted un- -- unilateral control of this
23 room, and she says she doesn't know about it. You
24 know, that's a fact issue that we would be

1 disputing, but the bottom line is we just need
2 protection. They can look at any of this video
3 that they want to. We just want to ensure that
4 there is a protective order.

5 She doesn't control turning cameras
6 on and off. She's not -- she's the custodian of
7 records. She doesn't own them. She doesn't
8 operate anything. You know, she takes minutes and
9 keeps the records of the township. We are not
10 going to deny her that. I mean, that's where we
11 stand. We would just like a protective order at
12 this point.

13 THE COURT: You want the protective order to
14 do what, limit the access to the lawyers?

15 MR. KELLY: Well, Judge, yes, although I
16 would -- at this point I would have to advise the
17 Court because I spent way too much time figuring
18 this out, but there is no easy way to just give
19 Mr. McArdle access to the -- or any other party
20 access to this web-based system. So what we've
21 done is the records that are on it, we've
22 downloaded to a flash drive. And I would --

23 MR. MCARDLE: No, no, no, no, no.

24 MR. KELLY: I would hand it out or you can go

1 to my office or the supervisor's office.

2 MR. MCARDLE: This is township. The clerk
3 should be able to -- why is this camera any
4 different than any other camera? Why can't you
5 just sit down at a computer and plop up the video
6 and bring it up and listen to what people have been
7 listening to?

8 MR. KELLY: Okay. She can do that, but
9 she's --

10 MR. MCARDLE: Why is that so difficult?

11 MR. KELLY: Because there is this two-system
12 password. If you can figure it out, that's great.

13 MR. MCARDLE: He should have gone to our IT
14 guy is what he should have done.

15 MR. KELLY: If he can figure it out, that's
16 great. I mean, we'll let you have it.

17 But, Judge, you know, we want to
18 cooperate. We don't --

19 THE COURT: This is now a record of the
20 township, right?

21 MR. KELLY: Yes, it is, absolutely, Judge.

22 THE COURT: It's a record of township
23 activities occurring on township property?

24 MR. KELLY: Yes, absolutely, Judge.

1 THE COURT: Then why isn't she the custodian?

2 MR. KELLY: She is.

3 THE COURT: Then why doesn't --

4 MR. KELLY: It's just a function of --

5 THE COURT: Why doesn't she have the access

6 she needs to this system?

7 MR. KELLY: Well, that's beyond -- the reason

8 is is this --

9 THE COURT: (Indiscernible) what it is --

10 what it is is unnecessary suspicion --

11 MR. KELLY: Yes, I know it creates

12 unnecessary suspicion.

13 THE COURT: -- that this woman is going to

14 commit a crime --

15 MR. KELLY: Yes, Judge.

16 THE COURT: -- correct?

17 MR. KELLY: Yes, Judge, that's what it looks

18 like.

19 THE COURT: Because of her association with a
20 now out of office official, right?

21 MR. MCARDLE: No, there is no allegations
22 about --

23 MR. KELLY: No, no, no, no.

24 MR. MCARDLE: -- Miller (indiscernible).

1 MR. KELLY: No, no, no, Judge. No. I'm
2 sorry. I think --

3 MR. MCARDLE: There is no suspicion on her.
4 That's not true at all.

5 MR. KELLY: No, no, no, no.

6 MR. MCARDLE: Look, if he can access -- if
7 his client can access the video and watch it and
8 the sound and listen to it and download it
9 somewhere, she should be able to do the exact same
10 thing. But they can't coordinate; they can't
11 communicate. That's the problem. We need an order
12 saying play nice.

13 MR. KELLY: Judge, I don't disagree with
14 Mr. McArdle on that at all. However, we need to
15 figure out the system to allow the clerk to have
16 access to it. And my concern is that at this --
17 first of all, the camera is taken down, so it's no
18 longer operating. So whatever is in there --

19 THE COURT: The Nest camera is gone too?

20 MR. KELLY: Yes. Correct, Judge. So
21 whatever is in --

22 THE COURT: The 14 camera system is down
23 because the hard drive is removed, and then this
24 camera has been removed by whom?

1 MR. KELLY: The clerk.

2 MR. MCARDLE: She took it down when she saw
3 it in her room.

4 THE COURT: What happened next?

5 MR. MCARDLE: You don't need the camera to
6 access the computer.

7 MR. KELLY: Judge, I have no idea. It was
8 taken down.

9 **Regardless, we have this data, this**
10 **video stuff in the Internet in a cloud someplace.**

11 We need two passwords essentially to access it and
12 to coordinate that -- I mean, the clerk is going to
13 have to literally go to the township office to sit
14 down and coordinate it. If she wants to work with
15 the IT guy to figure out a better way, you know, we
16 don't care.

17 MR. MCARDLE: This sounds like CIA stuff. I
18 mean, we just --

19 MR. KELLY: Unfortunately, you know --

20 THE COURT: No, he's not that sophisticated.

21 MR. MCARDLE: You did it. You downloaded it
22 somehow.

23 MR. KELLY: Yeah, that's because Ryan, the
24 clerk's office, has --

1 MR. MCARDLE: Double passwords.

2 MR. KELLY: Yes.

3 MR. MCARDLE: Okay. Well, tell him to
4 tell -- to do it. It's so simple.

5 MR. KELLY: Anyway, Judge, that's the dilemma
6 we have. And I just seek a protective order. I
7 would be more than happy to do anything we can do
8 to get this thing resolved.

9 THE COURT: It will be given out to the --
10 the passwords will be given to the attorneys for
11 the parties in addition to which the passwords and
12 access codes will be given to Karen Lukasik
13 personally as the township clerk. It is access to
14 which she is entitled, insofar as I'm concerned, as
15 a matter of law.

16 MR. KELLY: Yes, Judge.

17 THE COURT: In addition, all of the
18 supporting documents will also be given.

19 MR. KELLY: Judge, for the record, we'd just
20 like to say all the supporting documents have been
21 tendered, and it's one sheet of paper at this
22 point.

23 THE COURT: You have better knowledge than I
24 do what that term encompasses.

1 MR. KELLY: Anyway, Judge, in this order we
2 need to craft it, to prevent us coming back here,
3 in such a manner that the --

4 THE COURT: That's not possible.

5 MR. KELLY: Okay, Judge.

6 MR. MCARDLE: He's not granting the
7 protective order. He's requiring the production of
8 it to us. That's how it should read. It's not --

9 MR. KELLY: To you and the other attorneys.

10 MR. MCARDLE: And Karen.

11 MR. KELLY: And, you know, Judge, will the
12 existing protective order cover the video that is
13 on this camera?

14 THE COURT: Do you feel that it does?

15 MR. MCARDLE: Yeah, yeah, that would be fine.

16 MR. KELLY: Okay. In that case we --

17 THE COURT: Then we don't need any
18 supplement.

19 MR. KELLY: Okay.

20 MR. MCARDLE: I understand what to do with
21 it. I just want -- I want Ryan to cooperate and
22 let us get in and look at it and listen to it,
23 that's all, without any grief.

24 MR. KELLY: And I get that. It's just that

1 you are going to have to coordinate. I mean, it
2 just is not a one-step process.

3 Judge, I'll draft an order.

4 THE COURT: All right.

5 MR. MCARDLE: Thank you.

6 MR. GUMMERSON: Thank you, your Honor.

7 THE COURT: You're welcome.

8 (Which were all the proceedings
9 had in the above-entitled cause
10 this date.)
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1 STATE OF ILLINOIS)
)
2 COUNTY OF McHENRY) ss:
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4 I, KRISTINE L. FERRU, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.

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-----*Kristine Ferru*-----

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