

1 STATE OF ILLINOIS )  
 ) SS:  
2 COUNTY OF DU PAGE )

3 IN THE CIRCUIT COURT OF DU PAGE COUNTY  
4 FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS

5 DOROTHY M. HANLOCK, )  
 )  
6 Plaintiff, )

7 vs. ) No. 2007-MR-1710

8 WINFIELD FIRE PROTECTION DISTRICT, )  
9 PHILLIP J. SAAS, TRUSTEE; )  
10 GEORGE T. KALLAS, TRUSTEE; )  
11 GARY L. MUEHLFELT, TRUSTEE; )  
12 WILLIAM R. THAR, TRUSTEE; and )  
13 PHILLIP A. DIMENZA, FIRE CHIEF. )

14 Defendants. )

**ORIGINAL**

15 REPORT OF PROCEEDINGS had at the hearing  
16 of the above-entitled cause, before the Honorable  
17 KENNETH L. POPEJOY, Judge of said Court, recorded on  
18 the DuPage County computer-based digital recording  
19 system, on Tuesday, the 4th day of December, A.D. 2007.

20 PRESENT:

21 KONEWKO & ASSOCIATES, LTD., by  
22 MR. MICHAEL R. KONEWKO,

23 appeared on behalf of the Plaintiff.

24 MICKEY, WILSON, WEILER, RENZI & ANDERSSON, P.C., by

MR. BERNARD K. WEILER,

appeared on behalf of the Defendants.

1 THE COURT: Thank you very much.

2 MR. WEILER: By the way, that 28-2 of the Election  
3 Code says that these petitions are good for, you know,  
4 over a year. So it's not as if --

5 THE COURT: Right.

6 MR. WEILER: It's not as if getting it there by  
7 the last -- that does not insist that there is no  
8 opportunity to appear in any one of the given dates in  
9 advance of the filing of this petition.

10 THE COURT: Got it. Okay.

11 Any final word on your part, as you're the  
12 movant?

13 MR. KONEWKO: I just reiterate everything I have  
14 set forth in my motion.

15 THE COURT: Then there's no reason to reiterate.

16 MR. KONEWKO: There's no reason to reiterate,  
17 correct.

18 THE COURT: Thank you very much. Okay.

19 It's an interesting and novel issue. And as  
20 I've said on a number of cases that I've had this fall  
21 and recently, that's what makes this particular court  
22 call especially fascinating to me and one that I chose  
23 to get into, because they are fascinating.

24 There are issues of equity, there's issues of

1 statutory construction here, the strict construction of  
2 same. There's issues where the statutes don't directly  
3 address the factual circumstances that we have between  
4 the petition submitted by Dorothy Hanlock and how the  
5 Fire Protection District should or should not deal with  
6 those and the like.

7 But following a review of all of same,  
8 following the stipulation of facts, which I want to  
9 commend both counsel on, because I think it would have  
10 been a very involved fact in laying out the proof in  
11 regard to all of these, but I think it was appropriate  
12 that it be done by stipulation of facts, as is done  
13 here, and you both did an outstanding job in putting  
14 this together. And I think everybody would like to  
15 know the Court's interpretation, because it is a very,  
16 very interesting question, and I don't think there is a  
17 black and white that's there.

18 I am going to state, though, that I am, on  
19 today's date, going to issue a writ of mandamus. And I  
20 am going to command the District and the individual  
21 respondents to, before December 6, 2007, certify the  
22 petition to allow a vote and deliver same to the DuPage  
23 County Election Commission so as to allow the DuPage  
24 County Election Commission to submit the petition to

1 allow a vote to electors of the district on February  
2 5th of 2008.

3 I am denying petitioner her attorney fees and  
4 costs in regard to same pursuant to 735 ILCS 5/14-105  
5 or on any other basis, because I think this is a very  
6 unique issue, I think it was an issue that both parties  
7 needed a judicial determination on, and I don't think  
8 it is one that would obligate or have me sit there and  
9 have the Fire Protection District satisfy the  
10 petitioner's, quote, damages, end of quote, whatever  
11 they are, and costs, including reasonable attorney  
12 fees.

13 I do want to stress as a basis for my ruling,  
14 because I think it's very important to have a basis for  
15 a ruling on things of this nature especially, that when  
16 I look at the stipulated facts, we have a unique  
17 situation with the Board of Trustees of the Winfield  
18 Fire Protection District, is that there has never been  
19 any designation of any individual or, as 10 ILCS 5/28-1  
20 states, quote -- not quote but an -- and then quote --  
21 "officer with whom the petition must be filed," end of  
22 quote. And that's the troublesome thing for me here.

23 I understand that they only meet once a  
24 month. I understand that anybody who wishes to present

1 something to the Board of Trustees could have done so  
2 in October, September, August, any other time along the  
3 way, and doesn't necessarily have to wait till the last  
4 minute. But I also understand that people don't have  
5 to necessarily be overly prepared or beyond prepared in  
6 trying to get something to be placed on a ballot.

7 In our country, getting things placed on a  
8 ballot, having the people within the constituency of a  
9 certain jurisdiction -- this being the constituency of  
10 the Winfield Fire Protection District -- have a right  
11 to present things in an appropriate manner to attempt  
12 to have ballot determinations made, in this case:  
13 Whether the trustees of the Winfield Fire Protection  
14 District should be appointed or should be elected.

15 I think the absence of having any officer  
16 with whom a petition must be filed, the absence of  
17 having anybody who is available between the dates of  
18 the Board of Trustee meetings, where there can be a  
19 trick bag like this, where, just by the freak of a  
20 calendar, we've got a November 19th cutoff and the next  
21 meeting November 20th, that poses a unique problem to  
22 the individual people within a constituency as to  
23 whether they can or cannot in a timely manner present  
24 issues to be placed on a ballot.

1           I think there's nothing that prevents someone  
2 from coming up at a certain time or up to a certain  
3 time frame to file things, that being in this case the  
4 November 19th date. But here, really, having no  
5 resource when they wish to do something prior to the  
6 very last day in order to file anything, there is no  
7 place that the Winfield Fire Protection can accept that  
8 pursuant to an, quote, officer with whom a petition  
9 must be filed.

10           The Winfield Fire Protection District meets  
11 at the location of the fire department, has their  
12 offices at that location. To the extent that any mail  
13 is delivered or phone calls or made, it's to that  
14 location. And so, does Phillip A. DiMenza, the Chief  
15 of the Winfield Fire Department, become an authorized  
16 agent to accept things on behalf of the Board of  
17 Trustees? That's a difficult question. And it's  
18 difficult to put Mr. DiMenza in that position. And he  
19 appropriately signed this, that he was accepting it on  
20 his behalf, not on behalf of the Board of Trustees.

21           But, nonetheless, the officers of the Board  
22 of Trustees had these petitions within the office  
23 premises prior to the 19th. The petitions were, in  
24 fact, present at the meeting of the Board of Trustees.

1 And, yes, quite accurately, they were not being  
2 presented by Chief DiMenza.

3 It's not Chief DiMenza's role to, quote,  
4 present them, end of quote. In fact, it's my  
5 understanding he's not necessarily in favor of the  
6 content of what is being sought here, but that's  
7 irrelevant to the issue. They're there with the Fire  
8 Protection District. They're at the Board of Trustees  
9 meeting, "they" being the petitions that are there.

10 Yes, it would have been a little bit better  
11 for someone of the public to have been there to present  
12 them on that date. And, yet, even that could have been  
13 a technical violation, because they're presenting it on  
14 the 20th, and the 19th was the cutoff for presentation.  
15 So I don't think it's fatal that some member of the  
16 public or some proponent of these petitions was not at  
17 the meeting, because we would still have the same  
18 esoteric legal argument in regard to same.

19 I think, absent the Winfield Fire Protection  
20 District's appointment of or designation of an officer  
21 with whom the petition must be filed, absent that,  
22 then, to the members of the general public, the Chief,  
23 the Fire Chief at the location of the Winfield Fire  
24 Protection District, at the offices of the Winfield

1 Fire Protection District, has the obligation to take  
2 those and to accept those on behalf of the Winfield  
3 Fire Protection District, and that it was a valid  
4 presentation of those within a timely manner, on or  
5 before November 19th, to satisfy the requirements to  
6 place this matter on the ballot. And, as such, the  
7 writ of mandamus shall issue for the reasons stated on  
8 the record.

9 I need an order drawn to that effect that  
10 says, for the reasons stated on the record. Don't try  
11 to redo that.

12 MR. KONEWKO: No. I have not.

13 THE COURT: It isn't going happen.

14 MR. KONEWKO: No. I understand.

15 THE COURT: Now, you have a question.

16 MR. KONEWKO: Yes, your Honor. Just one thing.  
17 On the attorney's fees, you're absolutely correct. I  
18 did find one case after this was drafted that is  
19 dispositive, that they are not -- cannot come out of  
20 here. There are no damages presented, except under  
21 735 ILCS 5/14-105, if a writ issues, the costs, which  
22 are \$280 only, are to be taxed to the petitioner.  
23 That's the only --

24 THE COURT: To the petitioner, right.

1 MR. KONEWKO: No. She is supposed to be paid that  
2 from the defendant. It says defendant shall pay to the  
3 petitioner.

4 THE COURT: Do you agree that that's how the  
5 statute reads?

6 MR. WEILER: I haven't seen it.

7 THE COURT: Do you have the statute in front of  
8 you that shows -- I mean, if that's how the statute  
9 reads --

10 MR. KONEWKO: Yes. It says only if a writ issues.  
11 And a writ issued.

12 THE COURT: If the writ issues, that would be the  
13 situation, but unless you can show me something to the  
14 contrary, but --

15 MR. WEILER: I haven't seen what he's referring to  
16 with respect to --

17 MR. KONEWKO: I didn't bring my book, the Civil  
18 Practice Act, with me.

19 MR. WEILER: I think I have one.

20 THE COURT: I've got one here. Okay. What do you  
21 say is the statute?

22 MR. KONEWKO: It's 735 5/14-105.

23 MR. WEILER: While you're looking for that, Judge,  
24 the date for the certification is that they're to

1 certify that they received it on the 16th?

2 THE COURT: Yes.

3 MR. WEILER: That was presented on --

4 THE COURT: Yeah, that would be the date.

5 MR. WEILER: Okay.

6 THE COURT: 105, did you say?

7 MR. KONEWKO: Yes. 14-105.

8 THE COURT: "Judgment - Costs. If judgment is  
9 entered in favor of the plaintiff, the plaintiff shall  
10 recover damages and costs. If judgment is entered in  
11 favor of the defendant, the defendant shall recover  
12 costs."

13 And you're saying that the costs for the  
14 issuance of a writ of mandamus is X amount and that's  
15 why --

16 MR. KONEWKO: Just the filing fee.

17 THE COURT: Pardon?

18 MR. KONEWKO: It's just the filing fee.

19 THE COURT: Oh, it's the filing fee. It's not the  
20 issuance of --

21 MR. KONEWKO: No. You get your costs, the costs  
22 of the filing fee to have the mandamus issued. And  
23 that's the way I read the case law.

24 THE COURT: Okay. So there isn't a cost on the

1 writ to issue. You're asking for reimbursement of the  
2 filing fee.

3 MR. KONEWKO: Yeah. And that's the way I read  
4 that, of costs.

5 MR. WEILER: It's implied. Without charge to  
6 Mr. Konewko, I would be very happy to comply with that,  
7 comply with the order, unless I'm directed to appeal  
8 it, but I don't think I am. So I don't know that  
9 there's really a cost associated with the issuance of  
10 the writ.

11 THE COURT: No, it doesn't sound like it's costs  
12 on the issuance of the writ. It's the costs of the  
13 filing of the underlying cause of action. If someone  
14 prevails, do they get their costs for filing the  
15 underlying cause of action?

16 And, you know, I -- I'm going to deny that,  
17 Mr. Konewko. I understand --

18 MR. KONEWKO: Okay.

19 THE COURT: -- how 5/14-105 reads, but I think,  
20 you know, I think we have provided a benefit to those  
21 people who wish to have this on the ballot by granting  
22 this writ. I don't think that by doing so that that  
23 should be assessed against the Fire Protection District  
24 which, one -- and it clearly needs to be stated, one,

1 willingly submitted to this, waived initial procedural  
2 things that could have been done in regard to waiting  
3 to answer or do this and do that; and, also, had the  
4 intent of wishing to do things properly, wishing to  
5 have a court make a determination of what's appropriate,  
6 and complying in a prompt, timely manner in doing so.  
7 And as such, I don't think -- and it's certainly not a  
8 sanction of costs, but I don't think the extension of  
9 costs against them, I'm not going to put salt inside  
10 the wound.

11 MR. KONEWKO: That's fine. That's fine. I just  
12 had to bring it up, your Honor.

13 THE COURT: Got it. Thank you.

14 MR. KONEWKO: Thank you.

15 THE COURT: Thank you very much. Reference that  
16 in the order, though, so we're very clear on that.

17 MR. KONEWKO: Okay.

18 THE COURT: Court's adjourned.

19 (Which were all of the proceedings had at  
20 the hearing of the above-entitled cause,  
21 this date.)  
22  
23  
24