

1 STATE OF WISCONSIN CIRCUIT COURT MARATHON COUNTY

2 KENNETH CHARNESKI,

3 People,

4 V. Case No: 24-CV-33

5 VILLAGE OF KRONENWETTER,

6 BOBBI BIRK-LABARGE, KIM MANLEY,

7 And LEE TURONIE,

8 Defendants.

9 _____ /

10

11 ORAL RULING

12 BEFORE THE HONORABLE GALEN BAYNE-ALLISON

13 OCTOBER 23, 2024

14 APPEARANCES:

15

16 MR. KENNETH CHARNESKI

17 Pro Se

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19 MS. ASHLEY LEHOCKY

20 Attorney for the Village of Kronenwetter

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23 Reported by: Michelle M. Livingston 5652

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WITNESSES :

NONE

EXHIBITS :

NONE

09:39:43

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09:39:43 1 Merrill, Wisconsin
09:39:43 2 October 23, 2024
09:41:20 3 THE COURT: We will go on the record
09:41:22 4 in Marathon County case, 2024-CV-33, Kenneth Charneski
09:41:28 5 versus the Village of Kronenwetter, and other named
09:41:33 6 parties.
09:41:35 7 The appearances this morning are the
09:41:37 8 Plaintiff, Mr. Charneski, as a self represented
09:41:41 9 litigant, in connection with this portion of the
09:41:44 10 present litigation. And Attorney Ashley LeHocky for
09:41:51 11 the Defendants the Village of Kronenwetter, and Kim
09:41:56 12 Manley.
09:41:56 13 This is the date and time for the
09:42:01 14 Court's oral ruling on the Defendant's motion for
09:42:06 15 summary judgment, and dismissal, with respect to named
09:42:13 16 Defendants other than the Village.
09:42:16 17 Summary judgment is appropriate only
09:42:22 18 where those facts germane to the claims being
09:42:29 19 litigated are undisputed, and that is true here. This
09:42:40 20 is an action in mandamus, to compel the Village to
09:42:45 21 turn over certain public records. Including certain
09:42:55 22 public records, or a public record, perhaps, I am not
09:42:59 23 sure whether it was a single document, or a group of
09:43:03 24 documents, one page, or multiple pages, but in
09:43:06 25 particular, a document relating to activities of the

09:43:14 1 Village Attorney, occurring around August of 2023, and
09:43:34 2 subject of a request made mid-September by Mr.
09:43:42 3 Charneski.

09:43:43 4 Mr. Charneski has also claimed other
09:43:51 5 violations of Wisconsin's open records, or public
09:43:56 6 records law, including relating to what he asserts is
09:44:02 7 a request made July 11th, for prior records relating
09:44:09 8 to the activities of the Village Attorney, and also
09:44:13 9 relating to an insufficient posting. Because the
09:44:22 10 policy was posted, initially, during the time relevant
09:44:27 11 to this litigation, on the Village website, but not
09:44:34 12 physically at the Village Hall, or other place of
09:44:39 13 Village government.

09:44:40 14 The Court does not find that the
09:44:48 15 July 11th request was a request within the scope of
09:44:56 16 Wisconsin's open or public records law. It was a
09:45:01 17 request made in Mr. Charneski's capacity as an
09:45:07 18 official of the Village, and nothing about the
09:45:12 19 request, specifically, how it was phrased, or
09:45:16 20 conveyed, suggested to the person receiving the
09:45:21 21 request that it was such a request, and in any case
09:45:27 22 the request was not made to the designated legal
09:45:31 23 custodian of the Village.

09:45:33 24 Mr. Charneski has not demonstrated
09:45:44 25 any harm which has arisen from the Village's failure

09:45:51 1 to physically post at the government premises, it's
09:45:57 2 policy. And that will become germane a little bit
09:46:06 3 later when we talk about what costs or damages might
09:46:12 4 be warranted given Mr. Charneski's arguable status as
09:46:19 5 a prevailing party on one or more claims.

09:46:23 6 So, the Court finds that there were
09:46:29 7 two Chapter 19 violations. One with respect to the
09:46:35 8 September 12th, to 14th, request, and the other with
09:46:38 9 respect to the improper, or insufficient posting.
09:46:42 10 But, the Court finds that Mr. Charneski was not harmed
09:46:45 11 with respect to the posting.

09:46:47 12 The Village has complied with its
09:47:00 13 obligations, both with respect to the posting, and the
09:47:05 14 September 12th, to 14th, request.

09:47:08 15 The remaining issue to be decided
09:47:14 16 with respect to the Village, and Mr. Charneski's
09:47:18 17 claims against it, is again, what costs and damages
09:47:26 18 should be awarded, if any.

09:47:28 19 Before we move on to that, I want to
09:47:36 20 address Ms. Manley. Ms. Manley was not the legal
09:47:58 21 custodian. Ms. Manley, consequently did not have
09:48:06 22 obligations under our open or public records law. And
09:48:16 23 individual liability does not attach under our open or
09:48:27 24 public records law to public officials in any case.

09:48:33 25 Ms. Manley is not someone who could

09:48:40 1 be compelled to respond to Mr. Charneski's request,
09:48:43 2 nor is she someone who can be liable for the failure
09:48:48 3 of the Village, and its legal custodian of the records
09:48:54 4 requested to appropriately respond. Ms. Manley is not
09:49:01 5 a proper party to this action.

09:49:04 6 Attorney LeHocky, before I move on
09:49:07 7 to 19.37, and the question of costs and damages, you
09:49:15 8 asked the Court to dismiss Bobbi Birk-LaBarge, and
09:49:22 9 perhaps, it's a deficiency in the judicial dashboard,
09:49:27 10 or the way the parties are set forth in the dashboard,
09:49:31 11 but I don't see that Bobbi Birk-LaBarge is presently a
09:49:35 12 defendant in this action.

09:49:41 13 MS. LEHOCKY: I don't have the
09:49:42 14 complaint in front of me. She was listed as a
09:49:44 15 defendant. She was never served with an authenticated
09:49:48 16 copy of the summons and complaint. I am not sure if
09:49:51 17 that could have an impact on how it has been
09:49:54 18 entered into -- into CCAP.

09:49:59 19 THE COURT: All right.

09:50:02 20 MS. LEHOCKY: I am not -- I am not
09:50:04 21 sure on that, your Honor.

09:50:04 22 THE COURT: I understand.

09:50:05 23 I don't want to leave that
09:50:37 24 unaddressed today. So, we'll be just minute.

09:50:51 25 MS. LEHOCKY: So, I can see on

09:50:53 1 document --

09:50:54 2 THE COURT: Hold on. Hold on. Hold
09:50:55 3 on, Counsel. Just give me a minute, please.

09:50:58 4 MS. LEHOCKY: Sure.

09:50:59 5 THE COURT: All right.

09:52:26 6 With respect to Bobbi Birk-LaBarge,
09:52:32 7 it appears that she could have been properly a party
09:52:36 8 to this action, but no sufficient service was secured
09:52:42 9 on her, based on the factual assertions made by both
09:52:48 10 Mr. Charneski, and the Village, and the other
09:52:54 11 individually named Defendants. The Court does not
09:52:59 12 have to weigh the facts, or resolve a factual dispute,
09:53:04 13 because under either set of facts presented there was
09:53:06 14 no sufficient service on Bobbi Birk-LaBarge. For that
09:53:11 15 reason, the Court will also grant the motion to
09:53:14 16 dismiss Bobbi Birk-LaBarge as an individual named
09:53:17 17 defendant.

09:53:18 18 To put it plainly for Mr.
09:53:32 19 Charneski's benefit, it is not sufficient to serve
09:53:35 20 someone's employee, or subordinate, or deputy. The
09:53:41 21 obligation is to serve them personally. And only in
09:53:45 22 limited circumstances can any substitute service be
09:53:50 23 effected. And that has not proved out here.

09:53:53 24 Attorney LeHocky, I'll hear from you
09:54:12 25 very briefly regarding whether the Court should

09:54:14 1 consider Mr. Charneski a prevailing party under
09:54:18 2 *Blazel*, B-L-A-Z-E-L.

09:54:21 3 MS. LEHOCKY: Thank you, your Honor.

09:54:22 4 With regard to the September 12th,
09:54:26 5 and/or September 14th request, the Village did
09:54:30 6 substantially comply they provided him with well over
09:54:35 7 200 pages of documents in response to that request.
09:54:39 8 What they withheld was the invoice from Mr. Turonie's
09:54:46 9 firm for August of 2023. The Village did so with the
09:54:53 10 interest in maintaining privilege, after, I believe,
09:54:58 11 considerable con-- you know, consideration with regard
09:55:01 12 to whether that document could be released.

09:55:04 13 The Village at all times acted in
09:55:09 14 good faith, and in accordance with what it believed to
09:55:12 15 be the property -- proper authority under -- under
09:55:15 16 law. Mr. Charneski has not been damaged in the sense
09:55:19 17 that he did have access to those records, and was able
09:55:23 18 to view those records at his -- essentially, at his
09:55:28 19 leisure.

09:55:28 20 He has not submitted any affidavits
09:55:33 21 or evidence to refute the facts which have been
09:55:36 22 properly presented by the Village. I don't believe
09:55:40 23 that he has even made an assertion that he himself has
09:55:46 24 been damaged.

09:55:47 25 The applicable statute is section

09:55:52 1 19.37(2)(a). I believe that if the Court finds that
09:56:02 2 the -- it was in the interest of disclosure,
09:56:08 3 outweighing the interest of safeguarding this
09:56:10 4 attorney/client privilege, that Mr. Charneski was
09:56:15 5 entitled to a physical copy of that document, not
09:56:20 6 merely the ability to view it at Village Hall. The --
09:56:24 7 the damages would be not less than \$100. I don't
09:56:29 8 believe that they could in any way exceed that number.

09:56:35 9 Again, this is one document that he
09:56:37 10 did actually have access to. With regard to the
09:56:41 11 posting, I don't -- I don't believe that there is any
09:56:45 12 evidence in the record that Mr. Charneski was even
09:56:50 13 aware of the fact that, that posting was not
09:56:53 14 physically at Village Hall, until sometime after the
09:56:57 15 request was made. It was not discussed, it was -- it
09:57:00 16 was not asked for. He certainly knew how to make a
09:57:06 17 request, and -- and did so, and received most of what
09:57:11 18 he has asked for in response. And so, I don't -- I
09:57:14 19 don't see how he could possibly be a prevailing party
09:57:18 20 with regard to the alleged failure to properly post
09:57:22 21 notice of -- of how to access these kinds of records.

09:57:29 22 THE COURT: I mean, just so we're
09:57:31 23 clear, before I hear from Mr. Charneski though, the
09:57:33 24 Village declined to provide a copy, or as I would term
09:57:37 25 it, release the invoice in its entirety asserting

09:57:41 1 attorney/client privilege rather than, perhaps,
09:57:43 2 electing to release a redacted version of that
09:57:47 3 document; true?

09:57:49 4 MS. LEHOCKY: That's correct.

09:57:50 5 They provided him with a summary of
09:57:52 6 a -- of a past invoice, but they did not do that with
09:57:56 7 regard to the August 2023 invoice.

09:57:59 8 THE COURT: All right.

09:58:00 9 Mr. Charneski, I'll hear briefly
09:58:01 10 from you on the issue of whether or not you are a
09:58:03 11 prevailing party under *Blazel*, and what costs and
09:58:07 12 damages should be awarded to you.

09:58:11 13 MR. CHARNESKI: Well, Judge, first
09:58:14 14 off, as far as a posting I don't know if there was
09:58:19 15 supposed to be a posting until after I looked into
09:58:22 16 this after the fact. And that seems to me to be the
09:58:28 17 purpose of them posting it to begin with, because the
09:58:32 18 public is supposed to see that posting in a prominent
09:58:38 19 place, so they know the hours of when he can come in
09:58:45 20 and -- and look at these documents, and who to go to.

09:58:49 21 At the time, there were several
09:58:51 22 custodians. And my complaint outlines several
09:58:57 23 attempts I made to make arrangements to come in to see
09:59:03 24 these documents, and each time that I got -- either it
09:59:07 25 didn't work out for me, or it didn't work for Manley,

09:59:10 1 she had assumed the role of the gatekeeper of -- of
09:59:16 2 these particular documents. Aside from the Clerk, the
09:59:23 3 Clerk didn't even have access to them, because Manley
09:59:27 4 kept them in -- in her own office.

09:59:29 5 So, from that standpoint, had I
09:59:33 6 known -- had this been posted, I would have been more
09:59:37 7 assertive in -- in making -- in coming in at my
09:59:45 8 convenience and not theirs, and more or less insisting
09:59:52 9 on see them at my convenience.

09:59:54 10 And aside from that, the statute
09:59:59 11 says that you get -- you're entitled to copies. And
10:00:08 12 without -- without -- basically without delay. So,
10:00:11 13 they -- they did cause quite a few delays. That's
10:00:15 14 where I got the eight -- the, no less than eight
10:00:20 15 violations because of the delays, and different
10:00:23 16 requests for these documents.

10:00:25 17 THE COURT: I am going to -- hold
10:00:28 18 on, I'm going to stop you, Mr. Charneski.

10:00:28 19 MR. CHARNESKI: Okay.

10:00:28 20 THE COURT: I found two violations.
10:00:30 21 One, with respect to the posting, and one with respect
10:00:32 22 to the nondisclosure of the August 2023, I believe,
10:00:41 23 invoice for the Village Attorney that was requested in
10:00:42 24 mid-September. Two violations.

10:00:48 25 MR. CHARNESKI: Okay, well it

10:00:49 1 was -- it was my understanding that there was no
10:00:50 2 requirement when making a request. At the moment --
10:00:56 3 at the Village, any request by a trustee, or the
10:01:01 4 public, ever since Ms. Manley became Administrator in
10:01:08 5 July, any request for information in the past had
10:01:12 6 always been provided, was suddenly considered an open
10:01:22 7 records request, and treated as such.

10:01:25 8 And according to the statute, and
10:01:28 9 the Attorney General's guide, they both identify, you
10:01:36 10 know, certain words that need to be included. Like
10:01:39 11 this is a public information request. So, that's why
10:01:46 12 I counted some of these other requests as -- as part
10:01:51 13 of the complaint.

10:01:52 14 THE COURT: All right, Mr.
10:01:53 15 Charneski, I am going to stop you. I really need you
10:01:56 16 to focus in just on the two violations the Court has
10:02:00 17 found. Because you're going farther, and farther
10:02:04 18 astray from those two violations and whether you're --

10:02:04 19 MR. CHARNESKI: Okay.

10:02:04 20 THE COURT: -- and whether you're a
10:02:09 21 prevailing party, or entitled to costs or damages for
10:02:09 22 those violations. I am not going to entertain general
10:02:14 23 argument, that was the purpose of the briefing.

10:02:18 24 MR. CHARNESKI: Okay.

10:02:20 25 Well, I -- I believe I have

10:02:22 1 prevailed in showing that they violated the statute.
10:02:30 2 They claim I haven't been harmed,
10:02:34 3 but I would consider, you know, my duties being
10:02:41 4 obstructed and -- and denied as a trustee. I would --
10:02:45 5 I would consider that a moral injury where I have an
10:02:49 6 obligation to the public to look into this. And they
10:02:53 7 did their best throughout several months to deny that.
10:02:59 8 So, I would consider that an injury.

10:03:03 9 And, of course, then that
10:03:06 10 necessitated this whole action. Which I know I can't
10:03:15 11 get compensated for my time. That's -- that's
10:03:16 12 understood. But, there was a -- a, you know, a lot of
10:03:24 13 effort into it, and -- and -- and, of course, I did
10:03:27 14 not have a -- a -- a dollar amount of money that then
10:03:32 15 I lost because of this. It's just, I want to say
10:03:32 16 the -- the denial of a statutory right like this,
10:03:41 17 is -- is harm on it's own, to deny a right. So, that,
10:03:52 18 I -- I believe I have answered -- I think I have
10:03:54 19 answered what you are looking for. I'm not sure.

10:03:59 20 THE COURT: All right.

10:03:59 21 Any last words, Attorney LeHocky?

10:04:03 22 MS. LEHOCKY: Yeah.

10:04:03 23 I think there is a clear standing
10:04:05 24 issue here. Mr. Charneski does not have a duty to
10:04:08 25 bring claims on behalf of the public, and he certainly

10:04:11 1 doesn't have a right to receive damages on behalf of
10:04:16 2 the public. So, if that is his assertion, I think
10:04:20 3 that --

10:04:20 4 MR. CHARNESKI: No, I --

10:04:21 5 THE COURT: No, hold on. Stop!

10:04:23 6 Stop! Stop!

10:04:24 7 MR. CHARNESKI: Okay.

10:04:25 8 THE COURT: Mr. Charneski, I gave
10:04:26 9 you an opportunity to speak. We're on, what's
10:04:29 10 fundamentally, Attorney LeHocky's motion for summary
10:04:33 11 judgment, and the Court's assessment of costs and
10:04:38 12 damages following a decision on that motion. It's her
10:04:42 13 turn to speak. You will not interrupt her again.

10:04:45 14 MR. CHARNESKI: Yes, I understand.

10:04:45 15 THE COURT: Go ahead, Attorney
10:04:49 16 LeHocky.

10:04:49 17 MS. LEHOCKY: That's all that I
10:04:51 18 have, your Honor.

10:04:51 19 THE COURT: All right.

10:04:52 20 Mr. Charneski, I understand that you
10:04:59 21 have felt, and likely still feel a moral, or social
10:05:04 22 obligation in connection with this litigation, and
10:05:08 23 probably many other events that have happened in
10:05:11 24 connection with the Village, but this suit was brought
10:05:15 25 by you in your individual capacity.

10:05:34 1 As the Court addressed in its
10:05:40 2 specific question to Attorney LeHocky about the
10:05:43 3 decision of the Village to not release the, again, I
10:05:50 4 believe it's the August 2023 invoi-- invoice of the
10:05:53 5 Village Attorney at all, rather than in a redacted
10:05:55 6 form, the Court finds that, that is an unreasonable
10:05:59 7 interpretation of the Village's duties under our open
10:06:03 8 public records law. And, this litigation did effect a
10:06:07 9 change in the relationship of the parties in the sense
10:06:11 10 that the Village then disclosed that record.

10:06:18 11 With respect to that claim, and that
10:06:21 12 finding of a violation of the open records law, the
10:06:24 13 Court concludes that Mr. Charneski is a prevailing
10:06:29 14 party and the Court will award taxable costs, and
10:06:38 15 damages, in the amount of one hundred dollars.

10:06:40 16 The Village, although I think it
10:06:49 17 carried out an unreasonable interpretation of our open
10:06:56 18 or public records law when it failed to release a
10:06:56 19 redacted version of the invoice, was relying on advice
10:07:05 20 of counsel. And we want municipalities to rely on the
10:07:14 21 advice of counsel, and not simply make decisions based
10:07:19 22 on what is usually, but not always, usually but not
10:07:22 23 always, a very limited education and understanding of
10:07:27 24 the law. Which spans a wide, wide range of subject
10:07:34 25 matters ranging from our open or public records law,

10:07:37 1 on the one hand, to issues related to employment law,
10:07:42 2 and determination, or discharge of employees on
10:07:45 3 another, to zoning, land use, to contracts, it's a
10:07:52 4 wide scope. And there is a public policy interest in
10:08:00 5 having and encouraging municipalities to rely on legal
10:08:03 6 counsel. And to act consistent with their own
10:08:09 7 judgment, and the judgment of legal counsel.

10:08:11 8 So, the blame for the violation is
10:08:16 9 defuse. It is not simply a willful violation on the
10:08:21 10 part of the Village in defiance of the rights of the
10:08:25 11 public, or Mr. Charneski, in particular. And that's
10:08:33 12 why the Court is awarding only the minimal statutory
10:08:36 13 damages on that claim.

10:08:38 14 The Court has also considered, in
10:08:43 15 that regard, that the Village on, I think, likely the
10:08:49 16 advice of other legal counsel in connection with this
10:08:52 17 litigation, ultimately released the requested record.
10:09:02 18 They didn't fight tooth and nail until today to
10:09:06 19 provide the record. Its been available, it was
10:09:11 20 provided long ago.

10:09:12 21 With respect to the posting, it's a
10:09:30 22 more difficult question. The Court looks to the
10:09:58 23 specific language of 19.37(2)(a), and the statutory
10:10:14 24 provision specifically calls out as follows: "If the
10:10:20 25 requester prevails in whole, or in substantial part,

10:10:22 1 in any action filed under sub one, relating to access
10:10:26 2 to a record, or part of a record under section
10:10:31 3 19.35(1)(a), of the Wisconsin statutes."

10:10:34 4 The Court reads that as providing a
10:10:45 5 basis for costs and damages only for the improper
10:10:50 6 denial of access to a record, and the Court is not
10:11:00 7 willing to extend that to an improper posting of the
10:11:06 8 required notice, and consequently the Court will not
10:11:09 9 award costs or damages under section 19.37(2)(a), of
10:11:18 10 the Wisconsin statutes to Mr. Charneski.

10:11:24 11 Attorney LeHocky, I would ask that
10:11:25 12 you prepare orders consistent with the Court's
10:11:27 13 decision today for the Court's signature. Please
10:11:31 14 transmit a copy to Mr. Charneski if he is not an
10:11:35 15 e-filing party. And the Court will hold those
10:11:39 16 proposed orders for a minimum of ten days.

10:11:43 17 Anything further, Attorney LeHocky?

10:11:49 18 MS. LEHOCKY: We would like to
10:11:51 19 attach a transcript of today's hearing, and so, if
10:11:56 20 it's acceptable to the Court, we will wait until we've
10:12:00 21 had that to submit a proposed order.

10:12:01 22 THE COURT: Very well.

10:12:02 23 Anything further, Mr. Charneski?

10:12:07 24 MR. CHARNESKI: No, nothing, I
10:12:08 25 guess, that I can add.

10:12:09 1 THE COURT: All right.

10:12:12 2 We will be adjourned for today.

10:12:14 3 There are other proceedings that

10:12:16 4 will need to be had in connection with other issues in

10:12:22 5 this litigation.

10:12:24 6 Take care.

10:12:25 7 [Court in recess.]

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STATE OF WISCONSIN)
) SS:
COUNTY OF MARATHON)

I, Michelle M. Livingston, hereby certify that I am
the official court reporter for the Circuit Court,
Lincoln County, Wisconsin, acting in Marathon County,
that I have carefully compared the forgoing 19 pages
with my stenographic notes, and that the same is a
true and correct transcript.

Dated at Merrill, Wisconsin, this 15th day of
November, 2024.

Electronically signed by:
Michelle M. Livingston
Official Reporter
1110 East Main St.
Ste. 201
Merrill, WI 54452
715/536-0345