

STATE OF WISCONSIN CIRCUIT COURT BR. 7 WAUKESHA COUNTY

REDELLEN ROAD NEIGHBORHOOD
ASSOCIATION, INC., et al

Plaintiffs,

-vs-

Case No. 2010 CV 5341
ORAL RULING

THE DEPARTMENT OF NATURAL
RESOURCES,

Defendant.

Proceedings held in the above-entitled matter
on the 12th day of December, 2011, before the **Honorable**
J. MAC DAVIS, Circuit Court Judge presiding in Circuit Court
Branch 7, Waukesha County Courthouse, Waukesha, Wisconsin.

APPEARANCES:

ATTORNEY WILLIAM C. GLEISNER, III, 300 Cottonwood
Avenue, Suite No. 3, Hartland, WI 53029, appearing on behalf
of the Petitioners.

ATTORNEY DIANE L. MILLIGAN, 17 West Main Street, P.O.
Box 7857, Madison, WI 53707-7857, appearing on behalf of the
Respondent.

Gail M. Villwock

Official Court Reporter

COPY

1 TRANSCRIPT OF PROCEEDINGS

2 THE COURT: I'll call the Case of Reddelien
3 Road Neighborhood Association, Inc. and others versus
4 Department of Natural Resources, Case 2010 CV 5341.
5 The appearances, please.

6 MS. MILLIGAN: Your Honor, appearing on
7 behalf of the DNR, Assistant Attorney General Diane
8 Milligan.

9 MR. GLEISNER: On behalf of the Reddelien
10 Road Association, Attorney Gleisner.

11 THE COURT: All right. There is a request
12 for relief from the petitioners asking that I in
13 effect remand this for contested case hearing. The
14 DNR resists that request. The parties have briefed it
15 at some length. We have had a motion hearing
16 previously that I read back through everything again.

17 Today was set for me to rule and I'm
18 prepared to do so. I don't want to reinvite
19 reargument, it might confuse me too easily. But if
20 there is something new I would be happy to hear it.

21 Is there anything new from you, Mr.
22 Gleisner?

23 MR. GLEISNER: No, your Honor.

24 THE COURT: From you, Ms. Milligan?

25 MS. MILLIGAN: No, your Honor.

1 THE COURT: All right. I'm going to grant
2 Mr. Gleisner's request on behalf of his client. I
3 agree with Mr. Gleisner's analysis of where *Docks*
4 stands, the *Docks* case.

5 There, of course, having been no contested
6 hearing or the like in this matter, the DNR's review
7 in granting the permit is without any meaningful
8 record or any meaningful way for me to review
9 anything.

10 It's not required by the Court as *Barnes*
11 cited by the DNR points out. But *Barnes* doesn't say,
12 I can't do it, it just says, I don't have to do it,
13 it's an act of discretion. And I'm exercising my
14 discretion to remand the matter.

15 I suppose we could split hairs by remanding
16 it for a contested case hearing case as that's
17 prescribed for under 227.42 of the statutes. Or, am I
18 simply remanding it to have a hearing on the merits
19 with certain rights of the parties and calling it a
20 contested case hearing is simply a convenient,
21 shorthand way to describe the procedure that I'm
22 remanding for the DNR to conduct? I'm not sure it
23 matters either way, but that's the kind of hearing I'm
24 anticipating the DNR will conduct the procedures and
25 rights and process at a 227.42 contested case hearing

1 *ab initio* would have called for. But this action is
2 under 227.57 (7) as I guess everyone is aware of from
3 the briefs and discussion here.

4 To reiterate, there is no way for me to know
5 whether the DNR's conclusions are supported or not, I
6 know the parties have submitted that I guess those go
7 to credibility by the submitted information and
8 materials. But they're all kind of procedural limbo I
9 guess if we had a, if I was doing a trial on the
10 merits, or a summary judgment, or some other
11 proceedings where there was some limited consideration
12 of factual claims of the parties those things would
13 have been useful.

14 I guess really what they do is exemplify or
15 demonstrate there is some possibly reasonable basis to
16 reach different conclusions depending on how one views
17 the facts that might be developed on the record.

18 But it's the absence of the record that
19 leads the Court to take this step.

20 Mr. Gleisner, you'll have to draft the
21 Court's ruling.

22 MR. GLEISNER: Yes, your Honor.

23 THE COURT: I think the thing to do is for
24 me to retain jurisdiction in case either side is
25 dissatisfied with the outcome of such a hearing, or if

1 there is any reason along the way that it needs to be
2 referred back here.

3 MR. GLEISNER: Thank you, your Honor.

4 THE COURT: I decline the invitation of the
5 petitioner to try and be any more specific
6 about discovery or procedures to be used.

7 THE COURT REPORTER: I'm sorry, the?

8 THE COURT: The shorthand of the procedure
9 of a contested case hearing.

10 So is there anything else from you today,
11 Mr. Gleisner?

12 MR. GLEISNER: No, your Honor.

13 THE COURT: You, Ms. Milligan?

14 MS. MILLIGAN: No, your Honor.

15 THE COURT: All right. Thank you.

16 MR. GLEISNER: Just, Merry Christmas.

17 THE COURT: It was quite an education by
18 reading your briefs.

19 (Hearing concluded)

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STATE OF WISCONSIN)
) SS
COUNTY OF WAUKESHA)

I, Gail M. Villwock, Official Court Reporter for Br. 7 Waukesha County, State of Wisconsin, do hereby certify that the foregoing transcript is a true and correct transcription of my stenographic notes reported on said date, to the best of my belief and ability.

Dated this 14th day of December, 2011.


Gail M. Villwock, RMR