

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SUE MERCIER, ELIZABETH J. ASH,
ANGELA BELCASTER, JANET BOHN,
JULIE CHAMBERLAIN, MAUREEN
FREEDLAND, DAVID GOODE, BETTY
HAMMOND, CURT LEITZ, CONSTANCE R.
LONG, DAVID W. LONG, MYRNA D.
PEACOCK, BECKY POST, JAMES L.
REYNOLDS, ELLEN DODGE SEVERSON,
ERIC SEVERSON, LESLIE SLAUENWHIT,
HERMAN S. WIERSGALLA, HOWARD
WIERSGALLA, JAMES E. WIFFLER,
ROBERT WINGATE, HENRY ZUMACH and
FREEDOM FROM RELIGION FOUNDATION, INC.,

Plaintiffs,

v.

CITY OF LA CROSSE,

Defendant,

and

FRATERNAL ORDER OF THE EAGLES,

Intervening Defendant.

ORDER

02-C-376-C

On September 24, 2003, I entered an order granting the motion to intervene of the Fraternal Order of the Eagles, vacating the August 5, 2003 judgment and establishing a

schedule for discovery, dispositive motions and trial. Although defendant City of La Crosse had filed a notice of appeal, I concluded that I retained jurisdiction to vacate the judgment because defendant Order had filed its motions nine days before the city filed its notice of appeal, thus preventing the notice from taking effect until the Order's motion was resolved. See Fed. R. App. P. 4(a)(4)(A)---("If a party timely files in the district court [various motions, including motions to vacate the judgment under Fed. R. Civ. P. 60], the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion."); id. at 4(a)(4)(B)(i) ("If a party files a notice of appeal . . . before it disposes of any motion listed in Rule 4(a)(4)(A)---the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.")

Nevertheless, the Court of Appeals for the Seventh Circuit has interpreted the September 24 opinion and order as "a statement of [this court's] intention to vacate the judgment if the case were remanded." Mercier v. City of La Crosse, No. 03-342, slip op. at 1 (7th Cir. Oct. 22, 2003). The court of appeals "remanded" this case "for the district court to enter the appropriate order vacating its prior judgment." Id.

In accordance with the order from the court of appeals, IT IS ORDERED that the motion of intervening defendant Fraternal Order of the Eagles to grant relief from the August 5, 2003 judgment under Fed. R. Civ. P. 60(b) is GRANTED and the judgment is VACATED for the reasons stated in the September 24, 2003 opinion and order. The schedule

established in the September 24 opinion and order remains unchanged.

Entered this 27th day of October, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge