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Settlement crumbles; appeals court declines to put pieces back together

The 2nd District Appellate Court recently considered four certified questions arising out of Rockford's apparent settlement of a personal-injury case at a pretrial conference and the city's subsequent rejection of the settlement agreement when it came time for the Rockford City Council to vote.

Jane Meade sued the city in 2010, alleging that she was injured when she was standing in the parkway near a street and fell into a sinkhole that opened beneath her. *Meade v. City of Rockford*, 2015 IL App (2d) 140645.

At a pretrial conference on the eve of trial, the attorneys for the plaintiff and city were present in person. Meade and all five members of the city council's code and regulation committee were present by phone.

At the conference, the city offered \$400,000, which the plaintiff rejected. The city's attorney then conferred with the committee and offered \$600,000. The plaintiff accepted, and the matter appeared settled to all involved, including the trial court, which docketed the case as settled and struck the trial date.

About two weeks later, the city's attorney sent the plaintiff a draft settlement agreement, which she signed and returned four days later.

However, when the settlement agreement went before the full city council for a vote, it was rejected. Some of the same council members who had stated their approval of the settlement at the pretrial rejected the settlement when called upon to cast a formal vote.

It was undisputed that if all of the committee members had voted consistently with their earlier positions at the pretrial conference, the settlement would have

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passed.

As it turned out, the council voted 7-5 against the settlement.

Meade then asked the trial court to enforce the settlement agreement. The court declined but certified four questions for appeal.

The first was whether Section 3.1-40-40 of the Illinois Municipal Code excludes settlements of ongoing litigation pursuant to the reasoning applied in *Wheeling Park District v. Arnold*, 2014 IL App (1st) 123185.

The *Meade* court held that settlement of litigation was not excluded. The court noted the language of Section 3.1-40-40 providing that approval of a majority of a city council is required whenever the vote would "create any liability" or require "the expenditure or appropriation of its money."

The *Arnold* court had held that "a settlement agreement does not create a new debt, obligation, claim or liability," but rather, a settlement agreement is merely "a compromise of an existing disputed claim."

Thus, the park district in *Arnold* could informally delegate to its executive director the authority to enter into settlement agreements and it did not have to do so by formal vote at a park district board meeting.

Meade argued that under *Arnold*, settlement of a lawsuit does not constitute the "creation of a liability" and hence no ma-

majority vote of the City Council was required, just as no formal vote of the park district board in *Arnold* had been required.

The court disagreed, stating that reliance on *Arnold* was problematic because the facts and relevant statutory language were different. The evidence in *Arnold* showed that the park district had informally delegated the power to contract to its employee, that the park district accepted the contract the employees made and that it performed its obligations under that contract.

In Meade's case, however, no city delegation of the power to enter into the settlement agreement appeared in the record; the city never subsequently accepted or approved the settlement; and the city did not perform under the contract.

The court noted that unlike the Park District Code section in *Arnold* that requires the approval of the district board only when a vote creates a new debt, obligation, claim or liability, Section 3.1-40-40 of the Illinois Municipal Code requires the approval of the city council in two scenarios:

When the matter at issue would "create any liability" against the city and when the matter at issue requires "the expenditure or appropriation of its money." The *Arnold* court did not address any similar statutory requirement in the Park District Code of formal approval for expenditures or appropriations.

The second certified question — whether a Rockford ordinance requiring council consent was satisfied when all members of the committee extended approval of a settlement agreement at the pretrial conference — was also answered in the negative. The plaintiff argued that the phrase "consent of the city council" does not explicitly require a vote by the council itself. The court disagreed, holding that the ordinance in question could not change the operation of Section 3.1-40-40.

The third and fourth certified questions asked whether the committee members who voted in favor of the settlement at the pretrial conference were required to vote the same way at the full council meeting, and whether the settlement agreement was enforceable notwithstanding the council's final vote.

The court answered both questions in the negative. Committee members have the privilege to cast their votes in a manner they believe will best serve the public interest, the court said, even if that involves a change in position — "courts are ill-advised to interfere with the free exercise of this privilege."

Even so, the court noted the importance of pretrial conferences, that all involved had relied on the city's implied representation of authority to settle, and that the court "was frustrated by the monumental waste of the court's time" because of the city's actions.

In foreshadowing what may be involved for the city, the appellate court said "trial courts are not without tools to manage the conduct of municipal litigants that appear before them" and that municipal litigants may be sanctioned pursuant to Illinois Supreme Court Rule 219 just like any other litigant.