



WI: Judge Denies Basic Property Rights and Fuels Outrage

Pete Kennedy, Esq. – September 28, 2011

In a decision denying basic property rights and even exceeding the FDA's contempt for the rights of private contract and food freedom of choice, Dane County Circuit Court Judge Patrick J. Fiedler has issued an order holding that owners of cows do not have a fundamental right to consume milk from their own cow.

The judge issued the order in response to a motion to clarify an earlier ruling that livestock boarding agreements between a farmer and cow owners were in violation of Wisconsin law. The boarding contracts in question were between Walworth County dairy farmers Mark and Petra Zinniker and the members of Nourished by Nature LLC for a herd of dairy cows as well as between the Zinnikers and Galyle Loiselle and Robert Karp for an individual cow owned by the two. The Zinnikers did not have any ownership in any of the cows and were simply executing a services contract to board, care for and milk the owners' cows, and provide the milk to the owners.

On August 12, Judge Fiedler issued a ruling denying a motion by the Zinnikers, Nourished by Nature, Karp and Loiselle for a judgment that the boarding agreement the Zinnikers had with the cow owners was in compliance with Wisconsin law. In his opinion the Judge rejected out of hand the Zinniker plaintiffs' argument that they had a fundamental right to possess, use and enjoy their property (including "a fundamental right to own a cow, and to use their cows in a manner that does not cause harm a third party"); he stated this claim was "wholly without merit." The judge went on to hold that the plaintiffs were operating a dairy farm and were therefore subject to the requirements of Wisconsin's dairy code. Wanting to get more specific reasons for the judge's dismissal of their rights, the Zinniker plaintiffs filed a Motion for Clarification with the court.

On September 9, Judge Fiedler issued his decision on the motion, stating that the court's August 12 denial of plaintiffs' motion for judgment meant the following:

- (1) Plaintiffs do not have a fundamental right to own and use a dairy cow or a dairy herd;
- (2) Plaintiffs do not have a fundamental right to consume the milk from their own cow;
- (3) Plaintiffs do not have a fundamental right to board their cow at the farm of a farmer;
- (4) The Zinniker Plaintiffs' private contract does not fall outside the scope of the States' police power;
- (5) Plaintiffs do not have a fundamental right to produce and consume the foods of their choice;
- (6) DATCP [Wisconsin Department of Agriculture, Trade and Consumer Protection] . . . had jurisdiction to regulate the Zinniker Plaintiffs' conduct.

With this sweeping denial of basic rights, the judge refused to recognize any distinction between public and private activity; moreover, he was holding that the government had the power to regulate people's efforts to grow and raise their own food. Recently in California, the Santa Cruz County Board of Supervisors passed a resolution stating that it "supports, endorses and encourages the recognition of the right and freedom of people to raise their own food, including food derived from agricultural animals, for the enjoyment of themselves and their families, either by their own investment and labor or through the assistance of others through contractual arrangements." Judge Fiedler is holding that when you are raising your own food through a dairy livestock boarding arrangement the state has jurisdiction to meddle in your business--similar to FDA's views on freedom of food choice.

The judge's holding on the lack of basic property rights of cow owners has drawn public outrage. In Wisconsin raw milk activist Max Kane is leading a campaign to have the Wisconsin Judicial Commission investigate Judge Fiedler, encouraging people to file a formal complaint against the judge on the grounds that his ruling was unconstitutional, violating "the fundamental right to life and liberty of farmers and



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citizens." Others are pointing to the judge's decision as another reason to pass a raw milk bill currently before the legislature.

The case will continue in the courts. The Zinnikers plaintiffs filed an appeal of Judge Fiedler's decision on September 26.

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About the Case:

Farm-to-Consumer Legal Defense Fund et al v. Wisconsin Department of Agriculture and Consumer Protection

FTCLDF has brought suit against the State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) on behalf of Fund members, dairy farmers Mark and Petra Zinniker, as well as individuals who are members of an LLC (Nourished by Nature) that owns cows boarded at the Zinnikers' farm. The suit claims that herdshares are legal in Wisconsin and that an LLC and its members are entitled to board the LLC's cows at the farm of an experienced dairy farmer.

More information posted at http://www.farmtoconsumer.org/litigation-wi_zinniker.htm

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Hyperlinks for the PDF

issued a ruling – "Decision and Order on Plaintiffs' Motion for Summary Judgement", 12 August 2011 = <http://www.farmtoconsumer.org/docs/Grassway-Zinniker-decision-mot-4-dec-judg-00009770.PDF>

Motion for Clarification – "Zinniker Plaintiffs' Motion for Clarification and Memorandum in Support", 25 August 2011 = <http://www.farmtoconsumer.org/docs/mot-2-clarify-rule-56-zinniker-ps.PDF>

decision on the motion – "Decision and Order on Zinniker Plaintiffs' Clarification Motion", 9 September 2011 = <http://www.farmtoconsumer.org/docs/Zinniker-order-09-09-11-on-mot-4-clarification.PDF>

passed a resolution – "CA: Food Freedom Resolution Passes in Santa Cruz County", 28 September 2011 = <http://www.farmtoconsumer.org/ca-food-freedom-resolution-santa-cruz.htm>

FDA's views on freedom – "FDA's Response to FTCLDF Suit over Interstate Raw Milk Ban", 6 May 2010 = <http://farmtoconsumer.org/litigation-FDA-status.htm>

campaign – website post, "Judge's Decision is Reckless", 25 September 2011 = <http://www.rawmilkparty.com/>

raw milk bill – action alert, "Call Your Senators and Legislators Urge Them to Co-Sponsor the Raw Milk Bill", 1 April 2011 = <http://www.farmtoconsumer.org/aa/aa-1apr2011-wisconsin-raw-milk-bill-update.htm>