

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION  
CASE NO. 01-CV-10385**

**ANONKA JOCHAM and TAMMRA JOCHAM,**

**Plaintiffs,**

**v**

**COUNTY OF TUSCOLA,**

**Defendant.**

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An excerpt of proceedings had .... in the above-entitled matter before the Honorable David M. Lawson, United States District Judge, at Bay City, Michigan on the 24th day of February, 2003.

JEAN MARIE HANSEN, Esq and EDWIN KAGIN, Esq Appearing on behalf of the Plaintiffs

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**OPENING STATEMENT**

MR. KAGIN:

May it please the court, opposing counsel, ladies and gentlemen of the jury: This is an opening statement, it's not evidence, so anything I say to you, no matter how persuasive I think it might be, is just that.

It is my honor and duty to open the case and to present you with the first knowledge you will have of the claims of our clients sitting here before you. My daddy, a minister, told a story about a preacher who took his watch out and said here's a time limit. I said: Daddy, why is the preacher putting the watch down on the pulpit, what's that for? The preacher said it doesn't mean a thing, son. But you're here in this courtroom and it does.

I would like to give you some advice, one of which is how to be persuasive in a sermon. I recollect an old fella said first you tell them what you're going to tell them. Then you tell them. Then you tell them what you told them. That's what we're going to do, right now we're going to tell you what I think we're going to tell you.

Then the evidence from the witness stand is going to tell you. And then I'm going to summarize and tell you what I told you. I'm going to ask you to make a verdict for our clients. If you don't think we have proved it, hold for the defendants. It's easy, okay.

Now unlike a criminal case where one side has to prove the guilt of the accused beyond a reasonable doubt, that's where the scales shift like that, in a civil case it's a much lighter burden. You merely have to show more evidence on one side than the other, what is known as a preponderance of evidence, which I believe the judge will instruct you on.

Remember what I say isn't evidence, what opposing counsel says isn't evidence. Actually, with all due respect, what the judge says isn't evidence. His Honor acts as a referee, as it were, in this trial. And if we make objections, one side or the other, it's, we hope, not an attempt to conceal truth but really to insure that the trial follows in a way as it should. And you do have the right to make notes as his Honor told you.

Okay. Now here's what this is about. These are two citizens of the United States. Anonka and -- no, that was not always her real name, she had another name, Nancy Ann Hamilton, and she had it legally changed a few years ago to Anonka. It is our honor to have her sitting here. And Tammra. And they run a witch museum in the city of Caro, Michigan, and this witch museum is quite a nice place, I recommend everyone go to it. Not during the trial.

In that witch museum they try to dissuade people of certain, maybe, deeply held prejudices such as witches fly around on broomsticks and have black cats and familiar {familiar and} things like that. It's an educational thing for the kind of people who want to be in {burn} the Harry Potter novels, you know.

You know, I think maybe the reason people want to read {burn} the Harry Potter books is because they think they're true, they really believe there are witch type things going on.

Anyway, these ladies are certainly not witches, there are no witches. There may be people who laugh about them, but there are certainly no supernatural beings, at least not that we know of.

At any rate, the two plaintiffs are not Christians. They do not follow the Christian belief of the majority, and that's why the judge asked you about that.

Now we are very simply asking you to find for two American citizens who were exercising, or attempting to exercise, the kind of thing this country was built on, the constitutional right to freedom of expression, speech and so on; and who, by the actions of the defendants in this case, were denied the equal protection of the laws guaranteed them by the 14th amendment to the constitution of the United States.

Now that amendment, by the way, was the one that was passed after slavery was abolished back in the Civil War. Down south they call it the War of Northern Aggression, but it's generally known as the American Civil War where certain minority groups were freed from slavery and given the rights of citizens. It was put into law that no state, or the officials of that state, could deprive citizens of the United States of the equal protection of the laws given to other citizens.

And that's what plaintiffs say happened in Caro, Michigan, that good Christians -- and it is a majority of Christians in the community, and there is no problem with that, no one is challenging that right, but they didn't like Anonka and Tammra there and they wanted to drag them out of town. We're going to prove that to you.

And one thing here, specifically around Christmas of the year 2001, there was a creche, a manger scene, put onto the county courthouse as had been the custom. Now we are not here -- let me tell you a little bit about what this case is not about. It's not about the legality of the creche, it's not about whether it was right or wrong, it's not about what they said about the creche. Really, it was what happened to them as a result of attempting to exercise their rights as Americans. The ABC's of the case is it was appalling, baffling and cruel what happened to them.

Anonka calls and tries to register a protest about the creche, and she did that around December 8. She spoke to one Norma Bates who was the long time head of the counsel, the chair. Ms. Bates told her: Why don't you come to the commission meeting on December 11 and express your view. She says okay.

Well she and her daughter go to the council meeting on December 11 and it was as if someone had been laying for them; they were set up, we think the evidence will show, as if someone dug a hole and put some polyurethane {palm fronds} across it and --

MR. KOCHIS: Your Honor, I object {to} is {this} argument.

MR. KAGIN: -- then took --

THE COURT: Counsel, when there's an objection, stop so we can hear it and so the court reporter can record it. Thank you, Mr. Kochis. Response to the objection?

MR. KAGIN: This is opening statement, your Honor, it is an overview of what we're attempting to prove.

THE COURT: I believe in this case the objection is overruled, you may proceed.

MR. KAGIN: We're trying to show an improper motive. Now when they got to the council meeting, first there was a prayer and she challenged that. Then there was a challenge to the flag pledge, which is to be argued on March 24 before the U.S. Supreme Court, concerning the phrase under God in it, which was put in in 1954 during the Communist McCarthy scare.

At any rate, when it came her turn to talk, she barely got anything out of her mouth when the council started to attack her for being a non-Christian. She'll tell you about it, if she can do so without emotion. I hope she can. They attacked her for being non-Christian.

Miss Bates, the head of the council, read a letter that appeared a few days before in the paper supporting the view of the creche and the Christ child. And the article, by the way, came up the next day, or a few days later -- I think was the next day -- said no room for the Christ child again. No room again for the Christ child, you know, similar to no room at the inn.

Rather than the headlines saying citizen denied the right to speak in Caro, there was and has continued to be, a totally pro-Christian and anti-anybody who isn't a Christian diatribe in the city of Caro.

One counsel member took out a dollar bill, held it up and said: What does this say here? In God we trust. Do you spend this money? This kind of attack, without offering where they might get other money that doesn't have that phrase on there. And the attack went on and on, she will tell you about it. As the inquisition of Caro went on, the council attempted to steal these ladies' lives because they have different opinions.

They told Anonka she had no rights because she was not a Christian. That's when she called the lawyer. She will say to you, we believe, how dare they tell me I have no rights. At the hearing, which was a public hearing, where the council says Robert's Rules of Order apply, council members were not recognized by the chair but got up and attacked these women and continued to attack them.

Anonka got to speak less than a minute to a minute and a half, she's not sure. She couldn't go on. Her daughter wasn't permitted to speak at all, was shouted down and yelled at.

In other words, it was wrong not to believe in Christianity. That's what we're suing for. And the damages, they will describe. Damages of this sort, ladies and gentlemen, are difficult to prove, as is the case and the motive itself, but we think we can do that.

There are several types of evidence acceptable at law. One type of evidence is direct evidence, that is which you perceive through your senses, you see, you hear, you taste, touch it. It smelled like vanilla, it was raining

out.

Another type is documentary evidence, things that are written, and we have some of that. We have preserved the words of some of the council members that we will show you that were reproduced in the newspaper.

Another type is the physical evidence. A little while after, a campaign of crosses started --

MR. KOCHIS: Your Honor, I again object. This is inadmissible evidence and is well over a year later and has nothing to do with the lawsuit that's before the court.

MR. KAGIN: I certainly --

THE COURT: Members of the jury, understand, as I said before, an opening statement is an opportunity for counsel to present what he thinks the evidence will show. It's up to the court to rule on what is legally admissible evidence, and counsel's statements, as he has acknowledged, are not evidence before you. I'll overrule the objection. If counsel makes a representation -- if either side makes a representation -- in opening statement that is not borne out by the evidence, of course, it's not something that you would consider in deciding the case. You may proceed.

MR. KAGIN: Thank you, your Honor. That is an example of physical evidence. And we will show you through testimony that Anonka, came to understand that the purpose of the cross campaign was to get her out of town. The crosses to this day are in the Christian businesses, and they are circular, like garlic in the window sills or blood of the lamb on the window sill. In short, the very kind of thing that Anonka and her witch museum is lamenting, the history of the human race and the kinds of things we used to do to each other.

And that's generally, folks, what the case is about.

Tammra wasn't even acknowledged. She tried to speak, she couldn't. They wouldn't let her. They left in a state of shock. They went home, cried. Their children had been abused at school.

The argument, the discussion, hit the internet talking about the witches of Caro. And you can decide for yourselves if the opinions and the say so of officials in power in a community have any effect on the public opinion of that community or not. Or are those just nothing opinions when the council is saying to them: We don't need people like you in our town.

It went to a population of well over 8,000. It went beyond the county, it went into the internet where it can be read in China, anywhere in the world, free or not.

They were condemning these women. The crosses are still there.

Various arguments have been made that the courthouse was a public forum. And, as I say, we're not litigating the creche, but there are going to be, if you'll pardon me, lies that were told by people in power. One such is that there was a Klu Klux Klan rally, an unpopular group that they let demonstrate --

MR. KOCHIS: Your Honor?

THE COURT: Excuse me, Mr. Kagin.

MR. KOCHIS: Your Honor, I object. This is inadmissible. The court has ruled on this matter and it has nothing to do with the present lawsuit in front of this court.

THE COURT: Mr. Kagin, how does that have anything to do with the offense of December 11?

MR. KAGIN: It has to do with the credibility of the council, your Honor, is the only reason for which it is offered. They said that the Klu Klux Klan rally occurred at the situs of the creche, but we can prove it occurred across the street, a few blocks away.

THE COURT: I think that's collateral, I'll instruct you to move on.

MR. KAGIN: Very well, I'll move on. We're going to show you the newspaper articles, we're going to introduce witnesses who sent letters to the newspaper that was supportive of the two ladies, American citizens, the plaintiffs and these letters were not published. In the face of a statement from the editor, they got no letters of support for the women, only letters favoring the counsel.

We have one witness who was told by a member of the executive staff of the press that they received over 30 letters supporting the women and against the council, but they weren't printed. We'll attempt to show you why those things came about.

We will introduce newspaper articles quoting the commissioner, the chairman of the council. We will introduce business persons of the community who will testify and tell you that pressure was put upon them to accept one of the crosses and put it in their windows so they can get rid of the evil in their midst, the witches.

Basically, we're going to try to show that the city government, the county government, of Caro, Michigan was trying to establish a religion, that being the Christian religion and a certain aspect of the Christian religion.

By the way, when your council's prayer ends with in the name of Jesus, amen, you are at a certain level of religiosity that is quite clear. What does that say to the Jewish members of your community, the Muslims, the atheists, the Buddhists, people who all approach the table on equal footing? What does it say about things being biased, biased against them?

That's going to be our case. Basically we think that the council is attempting to follow the ancient Biblical statement of Exodus 22:18 that you shall not suffer a witch to live. Maybe not literally they didn't mean that, but the women's business has been spat upon, there have been death threats to them, they've been demeaned. Their business has dropped off. They have been publicly humiliated, and all of this a direct and proximate cause of people who define themselves as good Christians.

You'll hear that from the witnesses themselves, we will then hear from the defendants and their witnesses. If the plaintiffs don't prove it -- if you don't believe that's what happened -- hold for the defendants. Thank you.