

U.S. District Court
Western District of Wisconsin (Madison)
CIVIL DOCKET FOR CASE #: 3:16-cv-00421-wmc

Cleven, Gary v. Soglin, Paul et al
Assigned to: District Judge William M. Conley
Referred to: Magistrate Judge Stephen L. Crocker
Cause: 42:1983 Civil Rights Act

Date Filed: 06/15/2016
Date Terminated: 10/17/2017
Jury Demand: Both
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Gary Cleven

represented by **Bruce M. Davey**
Davey & Goldman
5609 Medical Circle, Suite 101
Madison, WI 53719
608-630-9700
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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V.

Defendant

Paul Soglin

represented by **Matteo Reginato**
Arenz, Molter, Macy, Riffle & Larson, S.C.
720 N. East Avenue
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262-548-1340
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Defendant

City of Madison

represented by **Matteo Reginato**
(See above for address)
ATTORNEY TO BE NOTICED

Remzy Bitar
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

David Schmiedicke

represented by **Matteo Reginato**
(See above for address)
ATTORNEY TO BE NOTICED

Remzy Bitar
(See above for address)
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|-------------------|--------------------------|---|
| 06/16/2016 | <u>1</u> | COMPLAINT against All Defendants. Service to be completed by Waiver of Service of Summons. (Filing fee \$ 400 receipt number 0758-1827998.), filed by Gary Clevon. (Attachments: # <u>1</u> JS-44 Civil Cover Sheet, # <u>2</u> Soglin Summons, # <u>3</u> City of Madison Summons, # <u>4</u> Schmiedicke Summons) (Goldman, Lisa) Modified on 6/17/2016: Deleted duplicate text. (lak) (Entered: 06/16/2016) |
| 06/16/2016 | | Case randomly assigned to District Judge William M. Conley and Magistrate Judge Stephen L. Crocker. (voc) (Entered: 06/16/2016) |
| 06/16/2016 | | Standard attachments for Judge William M. Conley required to be served on all parties with summons or waiver of service: NORTC , Corporate Disclosure Statement . (voc) (Entered: 06/16/2016) |
| 06/16/2016 | <u>2</u> | Summons Issued as to City of Madison, David Schmiedicke, Paul Soglin. (Attachments: # <u>1</u> Summons City of Madison, # <u>2</u> Summons David Schmiedicke) (voc) (Entered: 06/16/2016) |
| 07/15/2016 | <u>3</u> | Corporate Disclosure Statement by Defendants City of Madison, David Schmiedicke, Paul Soglin. (Bitar, Remzy) (Entered: 07/15/2016) |
| 07/15/2016 | <u>4</u> | Waiver of Service Returned Executed by Defendant Paul Soglin. Paul Soglin waiver sent on 6/16/2016, answer due 8/15/2016. (Reginato, Matteo) (Entered: 07/15/2016) |
| 07/15/2016 | <u>5</u> | Waiver of Service Returned Executed by Defendant David Schmiedicke. David Schmiedicke waiver sent on 6/16/2016, answer due 8/15/2016. (Reginato, Matteo) (Entered: 07/15/2016) |

- 07/15/2016 [6](#) Waiver of Service Returned Executed by Defendant City of Madison. City of Madison waiver sent on 6/16/2016, answer due 8/15/2016. (Reginato, Matteo) (Entered: 07/15/2016)
- 07/15/2016 [7](#) Notice of Appearance filed by Remzy Bitar for Defendants City of Madison, David Schmiedicke, Paul Soglin. (Bitar, Remzy) (Entered: 07/15/2016)
- 07/15/2016 [8](#) Notice of Appearance filed by Matteo Reginato for Defendants City of Madison, David Schmiedicke, Paul Soglin. (Reginato, Matteo) (Entered: 07/15/2016)
- 07/17/2016 [9](#) Corporate Disclosure Statement by Plaintiff Gary Clevon, (Attachments: # [1](#) Certificate of Service) (Goldman, Lisa) (Entered: 07/17/2016)
- 08/15/2016 [10](#) **MOTION TO DISMISS** by Defendants City of Madison, David Schmiedicke, Paul Soglin. Brief in Opposition due 9/6/2016. Brief in Reply due 9/15/2016. (Reginato, Matteo) (Entered: 08/15/2016)
- 08/15/2016 [11](#) Brief in Support of [10](#) Motion to Dismiss by Defendants City of Madison, David Schmiedicke, Paul Soglin. (Reginato, Matteo) (Entered: 08/15/2016)
- 08/15/2016 [12](#) Affidavit of Matteo Reginato filed by Defendants City of Madison, David Schmiedicke, Paul Soglin re: [10](#) Motion to Dismiss, (Attachments: # [1](#) Exhibit 1 - ETF 3/11/14 Decision, # [2](#) Exhibit 2 - CCAP Docket (13-cv-1212), # [3](#) Exhibit 3 - Decision 2014AP684, # [4](#) Exhibit 4 - WRS Confirmation Page, # [5](#) Exhibit 5 - 4/19/16 Hearing Transcript, # [6](#) Exhibit 6 - 5/11/16 Hearing Transcript) (Reginato, Matteo) Modified on 8/16/2016. (lak) (Entered: 08/15/2016)
- 08/16/2016 Set Telephone Pretrial Conference: Telephone Pretrial Conference set for 9/6/2016 at 02:30 PM before Magistrate Judge Stephen L. Crocker. Counsel for Plaintiff responsible for setting up the call to chambers at (608) 264-5153. [[Standing Order Governing Preliminary Pretrial Conference](#) attached] (voc) (Entered: 08/16/2016)
- 08/31/2016 Set Telephone Pretrial Conference: Telephone Pretrial Conference rescheduled from 9/6/2016 to 9/21/2016 at 01:00 PM to accommodate the court's calendar. Counsel for Plaintiff responsible for setting up the call to chambers at (608) 264-5153. (voc) (Entered: 08/31/2016)
- 09/06/2016 [13](#) FIRST AMENDED COMPLAINT against All Defendants, filed by Gary Clevon, (Attachments: # [1](#) Certificate of Service) (Goldman, Lisa) Modified on 9/7/2016. (lak) (Entered: 09/06/2016)
- 09/15/2016 [14](#) Report of Rule 26(f) Planning Meeting. (Reginato, Matteo) (Entered: 09/15/2016)
- 09/20/2016 [15](#) ANSWER to Amended Complaint by Defendants City of Madison, David Schmiedicke, Paul Soglin. (Reginato, Matteo) (Entered: 09/20/2016)
- 09/21/2016 Minute Entry for proceedings held before Magistrate Judge Stephen L. Crocker: Telephone Preliminary Pretrial Conference held on 9/21/2016 [:10] (cak) (Entered: 09/21/2016)
- 09/23/2016 [16](#) Pretrial Conference Order - Dispositive Motions due 4/7/2017. Settlement Letters due 9/29/2017. Motions in Limine due 10/6/2017. Response to Motion due 10/20/2017. Final Pretrial Conference set for 10/31/2017 at 04:00 PM. Jury Selection and Trial set for 11/13/2017 at 09:00 AM. Signed by Magistrate Judge Stephen L. Crocker on 9/22/2016. (jls) (Entered: 09/23/2016)
- 12/28/2016 17 **** TEXT ONLY ORDER ****
In light of defendants filing an answer to plaintiff's amended complaint (dkt. # [15](#)), defendants' motion to dismiss (dkt. # [10](#)) is denied as moot. Signed by District Judge William M. Conley on 12/28/2016. (voc) (Entered: 12/28/2016)

- 04/03/2017 [18](#) Stipulation to Extend Dispositive Motion Deadline by Defendants City of Madison, David Schmiedicke, Paul Soglin, (Attachments: # [1](#) Text of Proposed Order) (Reginato, Matteo) Modified on 4/3/2017. (lak) (Entered: 04/03/2017)
- 04/03/2017 19 ** TEXT ONLY ORDER **
[18](#) Stipulation accepted, extension granted. Dispositive Motions due 4/14/2017. Signed by Magistrate Judge Stephen L. Crocker on 4/3/2017. (voc) (Entered: 04/03/2017)
- 04/14/2017 [20](#) **MOTION FOR SUMMARY JUDGMENT** by Defendants City of Madison, David Schmiedicke, Paul Soglin. Brief in Opposition due 5/15/2017. Brief in Reply due 5/30/2017. (Reginato, Matteo) (Entered: 04/14/2017)
- 04/14/2017 [21](#) Brief in Support of [20](#) Motion for Summary Judgment by Defendants City of Madison, David Schmiedicke, Paul Soglin. (Reginato, Matteo) (Entered: 04/14/2017)
- 04/14/2017 [22](#) Proposed Findings of Fact filed by Defendants City of Madison, David Schmiedicke, Paul Soglin re: [20](#) Motion for Summary Judgment. (Reginato, Matteo) (Entered: 04/14/2017)
- 04/14/2017 [23](#) Affidavit of Matteo Reginato filed by Defendants City of Madison, David Schmiedicke, Paul Soglin re: [20](#) Motion for Summary Judgment, (Attachments: # [1](#) Exhibit 1 - Plaintiff's Deposition Transcript (See [40](#) for complete deposition in condensed format.) (Reginato, Matteo) Modified on 4/17/2017. (lak) (Entered: 04/14/2017)
- 04/14/2017 [24](#) **MOTION FOR PARTIAL SUMMARY JUDGMENT** by Plaintiff Gary Cleven. Brief in Opposition due 5/15/2017. Brief in Reply due 5/30/2017. (Goldman, Lisa) Modified on 4/16/2017: Corrected docketing event and all related entries. (lak) (Entered: 04/14/2017)
- 04/14/2017 [25](#) Brief in Support of [24](#) Motion for Partial Summary Judgment by Plaintiff Gary Cleven. (Goldman, Lisa) Modified on 4/16/2017. (lak) (Entered: 04/14/2017)
- 04/14/2017 [26](#) Affidavit of Bruce M. Davey filed by Plaintiff Gary Cleven re: [24](#) Motion for Partial Summary Judgment, (Attachments: # [1](#) Exhibit 1 - 7/13/04 WERC Decision, # [2](#) Exhibit 2 - 1/23/07 WERC Decision, # [3](#) Exhibit 3 - 3/26/12 City Brief to Div. Hearings and Appeals, # [4](#) Exhibit 4 - 7/10/12 Div. Hearings and Appeals Decision, # [5](#) Exhibit 5 - 6/16/16 City Report to WRS of Cleven Earnings, # [6](#) Exhibit 6 - WRS Report to City Detailing Cleven Amounts Owed, # [7](#) Exhibit 8 - WRS Admin. Manual, # [8](#) Exhibit 9 - Wertz Deposition Pages 1-15, # [9](#) Exhibit 12 - WRS Monthly Benefit Estimates for Cleven, # [10](#) Exhibit 13 - Expert Report of M. Wettstein, # [11](#) Exhibit 17 - Motion filed in State Court Proceeding for Finding of Contempt) (Goldman, Lisa) Modified on 4/14/2017. (lak) (Entered: 04/14/2017)
- 04/14/2017 [27](#) Disregard. See [36](#) . Modified on 4/16/2017. (lak) (Entered: 04/14/2017)
- 04/14/2017 [28](#) Disregard. See [35](#) . Modified on 4/16/2017. (lak) (Entered: 04/14/2017)
- 04/14/2017 [29](#) Second Affidavit of Bruce M. Davey filed by Plaintiff Gary Cleven (*Exhibit II*) re: [24](#) Motion for Partial Summary Judgment, (Attachments: # [1](#) Exhibit - Itemizations) (Goldman, Lisa) Modified on 4/16/2017. (lak) (Entered: 04/14/2017)
- 04/14/2017 [30](#) Affidavit of Janet Stutz-Cleven filed by Plaintiff Gary Cleven (*Exhibit 14*) re: [24](#) Motion for Partial Summary Judgment. (Goldman, Lisa) Modified on 4/16/2017. (lak) (Entered: 04/14/2017)

- 04/14/2017 [31](#) Affidavit of Gary Cleven filed by Plaintiff Gary Cleven (*Exhibit 15*) re: [24](#) Motion for Partial Summary Judgment. (Goldman, Lisa) Modified on 4/16/2017. (lak) (Entered: 04/14/2017)
- 04/14/2017 [32](#) Disregard. See [34](#) . Modified on 4/16/2017. (lak) (Entered: 04/14/2017)
- 04/14/2017 [33](#) Supplemental Affidavit of Bruce M. Davey filed by Plaintiff Gary Cleven re: [24](#) Motion for Partial Summary Judgment, (Attachments: # [1](#) Exhibit 1 - City Answer in 15cv1520 Dane County, # [2](#) Exhibit 2 - Plaintiff's Answer to Counterclaim in 15cv1520, # [3](#) Exhibit 3 - Affidavit of Schmidke in 15cv1520, # [4](#) Exhibit 4 - 7/6/16 Attorney May Letter) (Goldman, Lisa) Modified on 4/16/2017. (lak) (Entered: 04/14/2017)
- 04/14/2017 [34](#) Affidavit of Chris Gauthier filed by Plaintiff Gary Cleven (*Exhibit 16*) re: [24](#) Motion for Partial Summary Judgment, (Attachments: # [1](#) Exhibit 1 - Madison Stagehands Yearly Hours and Earnings, # [2](#) Exhibit 2 - Madison Stage Hands Total Hours Worked by Calendar Year) (Goldman, Lisa) Modified on 4/16/2017: Added exhibit descriptions, etc. (lak) (Entered: 04/14/2017)
- 04/14/2017 [35](#) Affidavit of Chris Gauthier filed by Plaintiff Gary Cleven (*Exhibit 10*) re: [24](#) Motion for Partial Summary Judgment, (Attachments: # [1](#) Exhibit A - Letter dated 4/30/2015) (Goldman, Lisa) Modified on 4/16/2017: Added exhibit description, etc. (lak) (Entered: 04/14/2017)
- 04/14/2017 [36](#) Affidavit of Gary Cleven filed by Plaintiff Gary Cleven (*Exhibit 7*) re: [24](#) Motion for Partial Summary Judgment, (Attachments: # [1](#) Exhibit B - Estimates Obtained from the WRS, # [2](#) Exhibit C - Copy of Hours Obtained from the City) (Goldman, Lisa) Modified on 4/16/2017: Added exhibit descriptions, etc. (lak) (Entered: 04/14/2017)
- 04/14/2017 [37](#) Proposed Findings of Fact and Conclusions of Law by Plaintiff Gary Cleven re: [24](#) Motion for Partial Summary Judgment filed by Gary Cleven. (Goldman, Lisa) Modified on 4/16/2017. (lak) (Entered: 04/14/2017)
- 04/17/2017 [38](#) Disregard. See [40](#) and [41](#) . Modified on 4/17/2017. (lak) (Entered: 04/17/2017)
- 04/17/2017 [39](#) Disregard. See [40](#) and [41](#) . Modified on 4/17/2017. (lak) (Entered: 04/17/2017)
- 04/17/2017 [40](#) Deposition of Gary Cleven taken on March 31, 2017. (lak) (Entered: 04/17/2017)
- 04/17/2017 [41](#) Deposition of Gary Cleven taken on April 4, 2017. (lak) (Entered: 04/17/2017)
- 05/15/2017 [42](#) Brief in Opposition by Defendants City of Madison, David Schmiedicke, Paul Soglin re: [24](#) Motion for Partial Summary Judgment filed by Gary Cleven. (Reginato, Matteo) (Entered: 05/15/2017)
- 05/15/2017 [43](#) Response to Proposed Findings of Fact filed by Defendants City of Madison, David Schmiedicke, Paul Soglin re: [24](#) Motion for Partial Summary Judgment. (Reginato, Matteo) (Entered: 05/15/2017)
- 05/15/2017 [44](#) Brief in Opposition by Plaintiff Gary Cleven re: [20](#) Motion for Summary Judgment filed by David Schmiedicke, City of Madison, Paul Soglin. (Goldman, Lisa) (Entered: 05/15/2017)
- 05/15/2017 [45](#) Affidavit of Bruce M. Davey filed by Plaintiff Gary Cleven *in Response* re: [20](#) Motion for Summary Judgment, (Attachments: # [1](#) Exhibit A - Notice of Appeal, # [2](#) Exhibit B - WRS Manual, # [3](#) Exhibit C - Deposition of Schmiedicke (Also see [48](#) .),

[4](#) Exhibit 2 to Deposition of Schmiedicke - Letter dated 6/26/2015,
[5](#) Exhibit 3 to Deposition of Schmiedicke - Letter dated 7/26/2016,
[6](#) Exhibit D - City Resolution) (Goldman, Lisa) Modified on 5/16/2017. (lak) (Entered: 05/15/2017)

- 05/15/2017 [46](#) Additional Proposed Findings of Fact filed by Plaintiff Gary Cleven re: [20](#) Motion for Summary Judgment. (Goldman, Lisa) Modified on 5/16/2017. (lak) (Entered: 05/15/2017)
- 05/15/2017 [47](#) Response to Proposed Findings of Fact filed by Plaintiff Gary Cleven re: [20](#) Motion for Summary Judgment. (Goldman, Lisa) (Entered: 05/15/2017)
- 05/16/2017 [48](#) Deposition of David Schmiedicke taken on 8/15/2016. (Goldman, Lisa) (Entered: 05/16/2017)
- 05/30/2017 [49](#) Brief in Reply by Defendants City of Madison, David Schmiedicke, Paul Soglin in Support of [20](#) Motion for Summary Judgment. (Reginato, Matteo) (Entered: 05/30/2017)
- 05/30/2017 [50](#) Response to Additional Proposed Findings of Fact filed by Defendants City of Madison, David Schmiedicke, Paul Soglin re: [20](#) Motion for Summary Judgment. (Reginato, Matteo) (Entered: 05/30/2017)
- 05/30/2017 [51](#) Brief in Reply by Plaintiff Gary Cleven in Support of [24](#) Motion for Partial Summary Judgment, (Attachments: # [1](#) Certificate of Service) (Goldman, Lisa) Modified on 5/31/2017. (lak) (Entered: 05/30/2017)
- 09/14/2017 [52](#) ** TEXT ONLY ORDER **
The court is aware of the proceedings in *Gersbach et al v. City of Madison* in the Dane County Circuit Court involving the City of Madison, Mr. Schmiedicke, and the plaintiff, and believes that they may bear on the issues before this court. As such, on or before 5:00 p.m. on September 19, 2017, the City is ordered to submit all briefs on the motion for summary judgment filed in that proceeding and the plaintiff is ordered to disclose any relevant representations or submissions by him orally or in writing, formally or informally, to the circuit court. Signed by District Judge William M. Conley on 9/14/2017. (voc) (Entered: 09/14/2017)
- 09/19/2017 [53](#) Response re: 52 Text Only Order. *Response to the Court's 9/14/17 Order for Production of Documents*, by Plaintiff Gary Cleven. (Attachments: # [1](#) Exhibit 1 - Plaintiff's Objection to Defendant's Motion, # [2](#) Exhibit 2 - Affidavit of Davey with Selected Exhibits, # [3](#) Exhibit 3 - Affidavit of Gauthier with Exhibits, # [4](#) Exhibit 4 - Affidavit of Cleven, # [5](#) Exhibit 5 - Affidavit of Stutz-Cleven, # [6](#) Exhibit 6 - Affidavit of Davey with Exhibits) (Goldman, Lisa) Modified on 9/19/2017: Clarified exhibit descriptions, etc. (lak) (Entered: 09/19/2017)
- 09/19/2017 [54](#) Response re: 52 Text Only Order, by Defendants City of Madison, David Schmiedicke, Paul Soglin, (Attachments: # [1](#) Exhibit 1 - Plaintiffs' Motion for Summary Judgment, # [2](#) Exhibit 2 - Plaintiffs' Brief in Support of Motion for Summary Judgment, # [3](#) Exhibit 3 - Response of City of Madison to Motion for Summary Judgment filed by Plaintiffs and Cross Motion for Summary Judgment, # [4](#) Exhibit 4 - City of Madison's Motion for Summary Judgment, # [5](#) Exhibit 5 - Plaintiffs' Motion for Summary Judgment, # [6](#) Exhibit 6 - Plaintiffs' Motion for Summary Judgment and Brief in Support, # [7](#) Exhibit 7 - Affidavit of Gary Cleven, # [8](#) Exhibit 8 - Affidavit of Janet Cleven, # [9](#) Exhibit 9 - City's Response to Motion for Summary Judgment, # [10](#) Exhibit 10 - Plaintiffs' Response Brief to Defendants Summary Judgment,

[11](#) Exhibit 11 - City's Reply to Motion for Summary Judgment,
[12](#) Exhibit 12 - Plaintiffs' Reply to Brief in Support of their Motion,
[13](#) Exhibit 13 - Docket for Cleven v. City of Madison, Case No. 2015-CV-1520,
[14](#) Exhibit 14 - Docket for Gersbach et al v. City of Madison, Case No. 2016-CV-1269)
(Reginato, Matteo) (Entered: 09/19/2017)

- 10/03/2017 [55](#) Stipulation to Extend Deadline to File Pretrial Submissions by Defendants City of Madison, David Schmiedicke, Paul Soglin, (Attachments: # [1](#) Text of Proposed Order) (Reginato, Matteo) Modified on 10/4/2017. (lak) (Entered: 10/03/2017)
- 10/04/2017 56 ** TEXT ONLY ORDER **
ORDER granting [55](#) Stipulation to Extend Deadline to File Pretrial Submissions . Signed by Magistrate Judge Stephen L. Crocker on 10/4/2017. (voc) (Entered: 10/04/2017)
- 10/12/2017 57 ** TEXT ONLY ORDER **
The court anticipates entering a summary judgment decision tomorrow that will require exhaustion of state court proceedings before action, if any, by this court. Accordingly, all deadlines are struck in this matter. Signed by District Judge William M. Conley on 10/12/2017. (mfh) (Entered: 10/12/2017)
- 10/13/2017 [58](#) OPINION AND ORDER granting in part [20](#) Motion for Summary Judgment as to plaintiff's claims against the individual defendants and as to plaintiff's due process claims; denying [24](#) Motion for Partial Summary Judgment; dismissing remaining claim on ripeness grounds. Signed by District Judge William M. Conley on 10/13/2017. (kwf) (Entered: 10/13/2017)
- 10/17/2017 [59](#) JUDGMENT entered in favor of Defendants City of Madison, David Schmiedicke, Paul Soglin dismissing the case. (voc) (Entered: 10/17/2017)
- 10/24/2017  [60](#) Bill of Costs by Defendants City of Madison, David Schmiedicke, Paul Soglin. Motions referred to Peter A. Oppeneer, Clerk of Court. Objection to Bill of Costs due 11/3/2017. Brief in Support to Bill of Costs due 11/13/2017. Brief in Reply in Opposition to Bill of Costs due 11/20/2017. (Attachments: # [1](#) Exhibit 1 - Bill of Costs Itemization and Invoices) (Bitar, Remzy) (Entered: 10/24/2017)
- 11/03/2017 [61](#) Response Stating No Objection to Bill of Costs by Plaintiff Gary Cleven re: [60](#) Bill of Costs filed by David Schmiedicke, City of Madison, Paul Soglin, (Attachments: # [1](#) Certificate of Service) (Goldman, Lisa) Modified on 11/3/2017. (lak) (Entered: 11/03/2017)
- 11/10/2017 [62](#) NOTICE OF APPEAL by Plaintiff Gary Cleven as to [58](#) Order on Motion for Summary Judgment, Order on Motion for Partial Summary Judgment, [59](#) Judgment. Filing fee of \$ 505, receipt number 0758-2140320 paid. No Docketing Statement filed. (Attachments: # [1](#) Certificate of Service) (Goldman, Lisa) Modified on 11/12/2017. (lak) (Entered: 11/10/2017)
- 11/13/2017 [63](#) Appeal Information Packet. (lak) (Entered: 11/13/2017)