

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE AT JACKSON**

FREEDOM FROM RELIGION)
FOUNDATION, INC.)
))
Plaintiff,)
))
vs.)
))
TOWN OF WHITEVILLE,)
TENNESSEE, MAYOR JAMES)
BELLAR and THE WHITEVILLE)
TENNESSEE BOARD OF ALDERMEN,)
))
Defendants.)

Case No. 1:11-cv-1374-JDB

AGREED JUDGMENT AND ORDER OF DISMISSAL

Freedom From Religion Foundation, Inc. sued defendants for alleged violations of the Establishment Clause. The alleged violations were the placement of stand-alone crosses at the Town of Whiteville City Hall; defendant James Bellar’s placing of a cross on the sidewalk in front of his insurance business; and a Latin cross on top of the Town of Whiteville’s water tower. In October 2011, the Town removed one arm from the cross on the water tower. The Foundation’s lawsuit contended that the remaining structure on the water tower violates the Establishment Clause.

The Defendants filed a motion for partial summary judgment contending that James Bellar did not violate the Establishment Clause when he placed a cross on the sidewalk in front of his business. The Defendants asserted two reasons why the cross on the sidewalk did not violate the Establishment Clause: (1) the part of the sidewalk on which Bellar placed the cross is Bellar’s private property; and (2) the Town could not prohibit a citizen from placing a cross on the sidewalk simply because it is a cross. The Town argued that the structure on the water tower did not violate the Establishment Clause because it was no longer a cross once the Town removed one of the arms.

The Foundation contends that religious symbols placed on public property remain subject to Town control and the requirements of the Establishment Clause. The Foundation also contends that the totality of the circumstances, including the timing of defendant Bellar's placement of the cross on the sidewalk and the fact that defendant Bellar is the mayor of Whiteville, creates genuine issues of material fact precluding summary judgment on that issue. The Foundation further contends that under *Lemon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S. Ct. 2105, 2111, 29 L.Ed.2d. 745 (1971), genuine issues of material fact exist regarding whether the structure remaining on the water tower (a) has a secular purpose, (b) whether its principal or primary effect advances religion or (c) whether it fosters excessive governmental entanglement with religion. For these reasons and because the parties have yet to complete discovery, the Foundation contends that the defendants' motion for partial summary judgment should be denied.

The Court ordered the parties to participate in two mediations in an effort to resolve the case. The parties have now agreed to entry of the following judgment and order of dismissal:

1. Defendants are enjoined from installing decorated or undecorated stand-alone crosses on city hall property;
2. The Defendants agree not to replace the arm removed from the structure located on the Whiteville water tower, and not to install any other decorated or undecorated stand-alone cross on the water tower;
3. Defendant Bellar agrees not to install a decorated or undecorated stand-alone cross on the publicly owned portion of the sidewalk in front of his insurance agency located at 140 E Main Street in the Town of Whiteville, Tennessee;
4. Within 30 days of the entry of this Agreed Judgment and Order of Dismissal, the Town agrees to pay the Foundation attorney's fees and other litigation expenses in the amount

of \$20,000.00. The parties will not apply for, nor will the Court award additional fees or expenses associated with this litigation.

5. All other claims of plaintiff are dismissed with prejudice.

s/ J. Daniel Breen

Judge J. Daniel Breen, United States District Judge

APPROVED FOR ENTRY

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s/Dale Conder, Jr.

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