



OFFICE OF THE CLERK

Supreme Court of Wisconsin

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November 24, 2020

Amended November 25, 2020

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You are hereby notified that the Court has entered the following AMENDED order (amended as to inclusion of separate writings):

No. 2020AP1927-OA Gymfinity, Ltd. v. Dane County

A petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70, an emergency motion for temporary injunction, and a supporting legal memorandum having been filed on behalf of petitioners, Gymfinity, Ltd., et al.;

IT IS ORDERED that respondents, Dane County, et al., shall file a response to the petition for leave to commence an original action and emergency motion for temporary injunction by 4:00 p.m. on Friday, November 27, 2020. The response shall be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.14, 809.80, and 809.81. The respondents shall also ensure a paper original and 10 copies of the response are received by the clerk within 24 hours of the electronic filing with the following notation on the top of the first page: "This document was previously filed via email."

REBECCA GRASSL BRADLEY, J., (*concurring in part, dissenting in part*). I concur with the court's order for the respondents to file a response to the petition for leave to commence an original action and emergency motion for temporary injunction. The petition and motion having been filed on November 23, 2020, I would have ordered a response to be filed on November 25, 2020, rather than the day after Thanksgiving. In delaying a decision on the emergency motion, the majority effectively denies the relief requested.

The emergency motion asks this court to enjoin Dane County Emergency Order #10 dated November 20, 2020, in which Janel Heinrich, Public Health Officer of Madison and Dane County, prohibits (among other activities) "any [indoor] gathering of individuals that are not members of the same household or living unit." In part, petitioners' motion seeks immediate relief enjoining Emergency Order #10 because "by banning any and all indoor gatherings, the Order effectively 'confin[es] people to their homes' during the Thanksgiving holiday." Among other claims, petitioners assert that "[g]athering with close family to celebrate Thanksgiving, as has been done on this continent since before the founding of this country" constitutes a constitutionally protected right. Additionally, petitioners argue that "[t]he private gathering ban will also result in deep inequities. If the Order is not enjoined, families with means or property outside Dane County can and likely will simply leave the county to gather elsewhere. Only those who have nowhere else to go will be forced to either isolate at home or risk a \$1,000 fine."

Ordering the respondents to file a response to the petitioners' emergency motion for temporary injunction by November 25, 2020 would have enabled the court to consider and decide the emergency motion, after hearing from all of the parties, before Thanksgiving Day. Declining to decide the motion promptly effectively denies the petitioners the relief they seek, at least in part. For this reason, I concur with the court's order directing the respondents to file a response but I dissent from that portion of the court's order setting November 27, 2020 as the deadline for that response.¹

¹ Justice Karofsky's concurrence contains multiple errors, and misunderstands this court's original jurisdiction. Contrary to her assertions:

- This court is capable of acting in a thoughtful and deliberative fashion on an expedited basis and has done so on numerous occasions this term and throughout its more than 170-year existence;
- It is a proper exercise of this court's original jurisdiction to decide motions on an expedited basis and we have done so numerous times in the last year alone;
- Even under an expedited schedule, all parties would have a chance to be heard. This court should be responsive to emergency situations as we have been throughout the COVID-19 pandemic. Almost 100 years ago, this court explained we have "control over our own work" and we should "use all reasonable and lawful means to see that it is done as expeditiously as circumstances will permit." See In re Snyder, 184 Wis. 10, 11, 198 N.W. 616

JILL J. KAROFSKY, J., (*concurring*). I join the court's order requiring the respondents to file a response by November 27, 2020 to the petition for leave to commence an original action and emergency motion for temporary injunction. I write separately to address Justice Rebecca Grassl Bradley's concurrence/dissent stating, "In delaying a decision on the emergency motion, the majority effectively denies the relief requested." Justice Rebecca Grassl Bradley takes the majority to task for not ruling on petitioner's request in three days' time.

The petition for leave to commence an original action and emergency motion for temporary injunction were filed on Monday, November 23, 2020, only three days before the Thanksgiving holiday (November 26). This court, with its seven justices, is designed to act in a thoughtful and deliberate fashion. Trial courts, on the other hand, are far better equipped to deal with emergencies and produce fast results, such as a three-day turnaround. We are not a trial court and it is an improper exercise of our authority to behave as one in this or any other case where injunctive relief is requested on an expedited timeline.

If the petitioners wanted a pre-Thanksgiving response to their motion for temporary injunction, they could have filed in Dane County Circuit Court, where such cases are most appropriately heard. They chose not to do so. While this court is responsive to emergencies, it should not act so quickly that a party is denied a meaningful opportunity to respond. All parties should have the chance to be heard.

This court has a long history of hearing from both sides before rendering decisions about temporary injunctions. We are doing that here. Ex parte temporary orders are best left for the trial courts, pursuant to Wis. Stat. § 813.02.

Sheila T. Reiff
Clerk of Supreme Court

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- (1924). This court explained that "[t]here is an insistent and well-founded demand by the public for a speedy and effective administration of justice, and it has been the constant effort of this court to meet such demand, not necessarily because it is a public demand, but because it is inherently reasonable and just. Courts are public servants created to do public work. They should prosecute such work, not only honestly and in accordance with established law, but timely. Clients are a part of the public and are entitled to a reasonably speedy determination of their cases. It has been the pride of this court and of courts generally of this state that litigants have had speedy justice." *Id.*; and
- No one requested an ex parte temporary order. I would have ordered the respondents to respond by November 25, 2020 and resolved the petitioners' emergency motion before Thanksgiving Day.