

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 26, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-0234

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**MARTHA BROCK AND
MILWAUKEE DEPUTY SHERIFF'S ASSOCIATION,**

PLAINTIFFS-RESPONDENTS,

V.

**MILWAUKEE COUNTY PERSONNEL REVIEW BOARD,
MARY LOU LINTON, FRED J. KNOX,
THOMAS J. PARKER, ROBERT W. SCHROEDER
AND WILLIAM G. TESTDORF,**

DEFENDANTS-APPELLANTS.

APPEAL from a non-final order of the circuit court for Milwaukee County: LOUISE M. TESMER, Judge. *Reversed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. The Milwaukee County Personnel Review Board, Mary Lou Linton, Fred J. Knox, Thomas J. Parker, Robert W. Schroeder, and

William G. Testdorf (collectively, “the PRB”) appeal from a circuit court order granting Martha Brock’s claim for a temporary injunction, and restraining the PRB from proceeding with the hearing on the termination of Brock’s employment until further order of the circuit court. The PRB claims that the circuit court erroneously exercised its discretion in granting the temporary injunction because: (1) Brock has an adequate remedy at law and should be required to exhaust her legal remedies; (2) Brock will not suffer irreparable injury; (3) the temporary injunction was not necessary to preserve the status quo; and (4) Brock does not have a reasonable likelihood of success on the merits. We conclude that the trial court erroneously exercised its discretion because Brock will not suffer irreparable injury if the temporary injunction is not granted.¹ Therefore, we reverse the circuit court’s order granting the temporary injunction.

I. BACKGROUND.

Brock is a deputy sheriff holding the rank of sergeant with the Milwaukee County Sheriff’s Department. She has worked for the Sheriff’s Department since 1984. During most of her tenure with the Sheriff’s Department, Brock has been assigned to either the basement or first floor of the Safety Building. During the course of her employment she developed severe allergies to mold, dust, and cockroaches, a fact not in dispute. Due to her belief that her allergies are aggravated by working in the Safety Building and the Criminal Justice Facility, the building next door to the Safety Building where the jail is located, she requested a transfer, which was denied. In November 1995, Brock filed discrimination charges against the Sheriff with the Wisconsin Equal Rights

¹ Because resolution of this issue is dispositive, we need not address the other issues raised on appeal. See *Sweet v. Berge*, 113 Wis.2d 61, 67, 334 N.W.2d 559, 562 (Ct. App. 1983).

Division and the Equal Employment Opportunity Commission under the Americans with Disabilities Act of 1990 (ADA) and Title VII of the Civil Rights Act of 1964.² The crux of her complaint is her contention that her request for a transfer due to her existing allergies was denied because of her race and in violation of the ADA. In February 1996, she again sought a transfer contending that she could work in other buildings which did not activate her allergies. In September 1996, the Sheriff filed written charges with the PRB seeking Brock's discharge, claiming that she was unable to perform the duties of a deputy sheriff sergeant. Later, the Sheriff supplemented the earlier charges with the allegation that many of the essential functions of a deputy sheriff sergeant were located in the Safety Building and, as a consequence, Brock was unable to perform her duties. She was suspended with pay pending the PRB discharge hearing.

In December 1996, Brock and the Deputy Sheriff's Association filed a summons and complaint in Milwaukee circuit court seeking a temporary injunction preventing the PRB from proceeding with her termination hearing. The circuit court granted the request for temporary relief and entered an ex parte temporary restraining order prohibiting the PRB from proceeding. Later, the circuit court conducted a hearing, at which both sides were present, and ultimately granted Brock's and the association's request for a temporary injunction restraining the PRB from conducting a discharge hearing until further order of the circuit court. Brock was required to post a \$10,000 bond and this court granted the PRB's petition for leave to appeal a non-final order.

² Her complaint was later amended after the Sheriff filed charges seeking her discharge.

II. ANALYSIS.

The PRB claims, *inter alia*, that the trial court, in ordering the temporary injunction, erroneously exercised its discretion because Brock will not suffer irreparable injury if the temporary injunction is not granted. We agree and reverse the circuit court's order.

Circuit courts have the authority, pursuant to § 813.02, STATS., to grant temporary injunctions, but should do so only when four requirements have been met: (1) the movant has shown a reasonable probability of success on the merits; (2) the temporary injunction is necessary to preserve the status quo; (3) the movant has no adequate remedy at law; and (4) the movant will suffer irreparable injury if the temporary injunction is not granted. *See Werner v. A. L. Grootemaat & Sons, Inc.*, 80 Wis.2d 513, 520, 259 N.W.2d 310, 313-14 (1977). A circuit court's decision to grant a temporary injunction is discretionary, and should only be reversed upon an erroneous exercise of discretion. *See Browne v. Milwaukee Bd. of Sch. Dirs.*, 83 Wis.2d 316, 336, 265 N.W.2d 559, 568 (1978). An appellate court will only find an erroneous exercise of discretion "if the record shows that the trial court failed to exercise its discretion, the facts fail to support the trial court's decision, or [the appellate] court finds that the trial court applied the wrong legal standard." *Oostburg State Bank v. United Sav. & Loan Ass'n*, 130 Wis.2d 4, 11-12, 386 N.W.2d 53, 57 (1986). "It is recognized that a trial court in an exercise of its discretion may reasonably reach a conclusion which another judge or another court may not reach, but it must be a decision which a reasonable judge or court could arrive at by the consideration of the relevant law, the facts, and a process of logical reasoning." *Hartung v. Hartung*, 102 Wis.2d 58, 66, 306 N.W.2d 16, 20-21 (1981).

In *Sampson v. Murray*, 415 U.S. 61 (1974), a probationary federal employee was notified that she was going to be discharged due to her ““complete unwillingness to follow office procedure and to accept direction from [her] supervisors.”” *Id.* at 65 (alteration in *Sampson*). The employee filed a complaint requesting, *inter alia*, a temporary injunction preventing her dismissal pending agency determination of her appeal. *See id.* at 66. The District Court granted the temporary injunction, and the Court of Appeals affirmed, but the Supreme Court reversed. *See id.* at 66-67, 92. In so doing, the Court stated:

Respondent’s unverified complaint alleged that she might be deprived of her income for an indefinite period of time, that spurious and unrebutted charges against her might remain on the record, and that she would suffer the embarrassment of being wrongfully discharged in the presence of her coworkers. The Court of Appeals intimated that either loss of earnings or damage to reputation might afford a basis for a finding of irreparable injury and provide a basis for temporary injunctive relief. We disagree.

Id. at 89 (footnotes omitted). The court explained that “the temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury,” *id.* at 90 (footnote omitted), and stated that:

Assuming for the purpose of discussion that respondent had made a satisfactory showing of loss of income and had supported the claim that her reputation would be damaged as a result of the challenged agency action, we think the showing falls far short of the type of irreparable injury which is a necessary predicate to the issuance of a temporary injunction in this type of case.

Id. at 91-92 (footnote omitted). With respect to whether irreparable injury might ever occur in an employee-discharge situation, the Court said:

We recognize that cases may arise in which the circumstances surrounding an employee’s discharge,

together with the resultant effect on the employee, may so far depart from the normal situation that irreparable injury might be found. Such extraordinary cases are hard to define in advance of their occurrence. We have held that an insufficiency of savings or difficulties in immediately obtaining other employment—external factors common to most discharged employees and not attributable to any unusual actions relating to the discharge itself—will not support a finding of irreparable injury, however severely they may affect a particular individual. But we do not wish to be understood as foreclosing relief in the genuinely extraordinary situation. Use of the Court’s injunctive power, however, when discharge of probationary employees is an issue, should be reserved for that situation rather than employed in the routine case.

Id. at 92 n.68.

In the instant case, the circuit court stated that it believed Brock would suffer irreparably injury if the temporary injunction were not issued because: (1) she would sustain economic damages, such as the loss of wages and benefits; and (2) she would suffer damage to her reputation. Although the court was concerned with the economic damages that Brock might suffer if she were discharged, the court clearly attached great importance to the possibility that Brock’s discharge might damage her reputation. The court stated that it believed that Brock’s situation was unique because her position as a deputy sheriff was “a very high achievement for any individual” and was a position of “great responsibility” to which “considerable respect” was attached. The court believed that Brock would suffer loss of self esteem and that she might suffer loss of reputation “not only just within her employment environment but within the community at large.”

On appeal, Brock has limited her response to the issue of “the intangible damages related to loss of her reputation in the community and the Department.” Brock argues that the ramifications of being subject to a

disciplinary hearing include the loss of respect of her peers and “whispers of her colleagues as to ‘what really happened’ to cause her to appear before the Board. Brock asserts that her case presents the “extraordinary situation” which the United States Supreme Court referred to in *Sampson*, because, unlike the employee in that case, Brock is not a probationary employee, but rather a supervising sergeant, and as a result, “[e]ven the specter that Brock is a ‘bad cop,’ which a disciplinary hearing would conjure up, would undermine everything she worked for during her career.”

We conclude that the facts clearly do not support the circuit court’s finding that economic damages and possible damage to Brock’s reputation as a result of a PRB hearing and discharge would constitute irreparable injury. As the United States Supreme Court stated in *Sampson*, economic damages and damages to an employee’s reputation should only constitute irreparable injury in an “extraordinary situation.” *Id.* Nothing about Brock’s case makes her situation extraordinary. Brock is presumably neither the first nor the last employee in a respected supervisory position within a county department to be subject to a PRB discharge hearing. We see no reason why injury to an employee’s reputation should be viewed as irreparable merely because that employee happens to hold a position of relatively higher rank than other employees. Brock’s arguments that whispers and innuendo regarding the “real” reason for her discharge will cause her irreparable injury are also unpersuasive. Brock’s discharge hearing is specifically based, not on charges of misconduct, but on the fact that her allergies make her unable to perform the duties of her assigned position. By contrast, in *Sampson*, the employee’s discharge was based on her ““complete unwillingness to follow office procedure and to accept direction from [her] supervisors.”” *Id.* at 65 (alteration in *Sampson*). Although it is arguably possible that a discharge based

on charges of grave misconduct, or on allegations which would seriously and permanently damage a person's reputation, might constitute an "extraordinary situation" causing irreparable injury, it would be unreasonable to conclude that this is such a situation.

In *Garcia v. United States*, 680 F.2d 29 (5th Cir. 1982), the United States Court of Appeals for the Fifth Circuit, in holding that a discharged employee had failed to meet the requirements for a temporary injunction, stated:

It is practically universal jurisprudence in labor relations in this country that there is an adequate remedy for individual wrongful discharge after the fact of discharge. There is no provision in the law for injunctions against discharge in routine termination cases because the remedy by way of reinstatement and back pay is well established and is universally used.

Id. at 31-32. In this case, it is possible that the PRB may determine that Brock should not be discharged. If Brock, however, is discharged following her PRB hearing, and ultimately proves that her discharge was illegal under either the ADA or Title VII of the Civil Rights Act of 1964, Brock will not suffer irreparable injury because a remedy for her damages clearly exists. Therefore, we conclude that the circuit court erroneously exercised its discretion in granting the temporary injunction, and we reverse the circuit court's order.

By the Court.—Order reversed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

