



## OFFICE OF THE CLERK

**Supreme Court of Wisconsin**

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October 21, 2021

**To:**

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Waukesha County Circuit Court  
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Waukesha, WI 53188

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You are hereby notified that the Court has entered the following order:

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No. 2021AP1787

Allen Gahl v. Aurora Health Care, Inc., L.C. 2021CV1469

On October 20, 2021, an emergency petition to bypass the court of appeals was filed pursuant to Wis. Stat. §§ 808.05 and 809.60 on behalf of petitioner-respondent Allen Gahl, attorney in fact, on behalf of his principal, John J. Zingsheim.

The court of appeals granted Aurora Health Care's petition for leave to appeal and stayed the circuit court proceedings on October 14, 2021. Gahl did not file this bypass petition until six days later, on October 20, 2021. Despite the time-sensitive nature of the request, it is appropriate to give Aurora Health Care a brief period of time to respond.

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IT IS ORDERED the respondent-petitioner, Aurora Health Care, is directed to file a response to the petition to bypass no later than 12:00 noon on Friday, October 22, 2021;

IT IS FURTHER ORDERED that, no later than 12:00 noon on Friday, October 22, 2021, the parties shall file with the court a joint status report outlining any efforts towards the settlement of this matter; and

IT IS FURTHER ORDERED that the response and the joint status report shall each be filed as an attachment in pdf format to an email addressed to clerk@wicourts.gov. See Wis. Stat. §§ 809.70, 809.80 and 809.81. A paper original and 10 copies of each filed document must be received by the clerk of this court by 12:00 noon of the business day following submission by email, with the document bearing the following notation on the top of the first page: "This document was previously filed via email."

REBECCA GRASSL BRADLEY, J. (*dissenting*). Justice delayed is justice denied.<sup>1</sup> For John Zingsheim, justice delayed is a probable death sentence. As a result of contracting COVID-19, Mr. Zingsheim has been on a ventilator for more than two weeks, in a drug-induced coma. Consistent with Mr. Zingsheim's expressed wishes before ventilation, his nephew, Allen Gahl, who has power of attorney for making health care decisions on behalf of Mr. Zingsheim, sought a court order for the administration of Ivermectin after Aurora Health Care refused Mr. Zingsheim this treatment, which had been prescribed by Mr. Zingsheim's physician. After conducting hearings and considering the evidence presented, the Waukesha County Circuit Court<sup>2</sup> ordered Aurora to administer the medication. The parties later stipulated that Aurora would grant a physician, identified by Mr. Gahl, temporary, emergency privileges to enter the hospital and administer the medication, and Mr. Gahl would release Aurora from any claims arising from this arrangement. After a hearing, the circuit court agreed to enter a modified order reflecting these terms.

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<sup>1</sup> "When justice is not forthcoming, when it is deferred too long, the result may be extreme injustice." Strachan v. Colon, 941 F.2d 128, 129 (2d Cir. 1991) ("For that reason the 40th clause of Magna Carta provided that justice be to none denied or delayed. 1 W.S. Holdsworth, A History of English Law, 57-58 (3rd ed. 1922). This ancient tenet of the law has been capsulized in the expression 'justice delayed is justice denied.'"). Nearly a century ago, this court emphasized we should "use all reasonable and lawful means to see that [our work] is done as expeditiously as circumstances will permit." See In re Snyder, 184 Wis. 10, 12, 198 N.W. 616 (1924). This court recognized "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 . . . because it is inherently reasonable and just." Id. at 13.

<sup>2</sup> The Honorable Lloyd V. Carter presiding.

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After the parties presented the circuit court with the modified written order, the District II Court of Appeals<sup>3</sup> granted Aurora's petition for leave to appeal the circuit court's original order, and, on its own motion and with no reasoning whatsoever,<sup>4</sup> stayed the circuit court's order, despite no party requesting this action. It appears the court of appeals was unaware of the substance of the order it nevertheless decided to stay; the court of appeals wrote "[t]o the extent there have been any modifications to that order at the October 13, 2021 hearing, the parties may address the effect of those modifications in their appellate briefing."<sup>5</sup> The court of appeals then gave the parties five days to let the court know whether they would like an expedited briefing schedule. This means Mr. Zingsheim will be denied the treatment he desires and his own physician prescribes, while Aurora offers only palliative care, maintaining Mr. Zingsheim on a ventilator and in an induced coma.<sup>6</sup> Mr. Gahl's attorney described the situation to the circuit court in the following terms:

That ventilator is damaging his lungs on a daily basis. It's my understanding that he may actually have some perforations in his lungs today as a result of the ventilator. That's what ventilators do. They scar the tissue in your lungs and the pressure can blow holes, actually pierce the lungs, and can create permanent damage. That's why it is an emergency situation. That's why it is important that every day matters in terms of giving this patient Ivermectin.<sup>7</sup>

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<sup>3</sup> On the panel were Judges Mark Gundrum, Lisa Neubauer, and Paul Reilly.

<sup>4</sup> Gahl v. Aurora Health Care, Inc., No. 2021AP001787, unpublished order (Oct. 14, 2021) (per curiam) (granting leave to appeal and staying the circuit court's order and proceedings on its own motion).

<sup>5</sup> Id.

<sup>6</sup> Petition to Bypass at 2–3 ("On October 12, 2021, the Circuit Court signed an Order to Show Cause, thereby ordering Respondents/Petitioners to administer Ivermectin to John Zingsheim, in what was thought to be a final effort to save his life. On that same day the Respondents/Petitioners filed a Petition to the Appeal Court of Wisconsin. The next day following another attorney conference/hearing with . . . [the circuit court] and in an attempt to reach a compromise, it was decided that the family would find an outside doctor to administer the Order the next day on Oct. 13, 2021. The doctor submitted information so that he could be credentialed in an expedited fashion; he obtained the necessary medical malpractice insurance and Allen Gahl, Health Care POA signed a release of liability agreement indemnifying Aurora Health Care, Inc. The proposed agreement to the Order was drafted and was filed with the Court on October 13, 2021. However, on October 14, 2021 the Wisconsin Appeals Court granted the Respondent's/Petitioner's appeal and sua sponte, 'on our own motion, stayed the Order and Circuit Court proceedings pending resolution of this appeal.' That decision ended John Zingsheim's chance for having Ivermectin administered to him anytime in the near future.").

<sup>7</sup> Hearing Transcript at 17 (Oct. 13, 2021).

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In the meantime, the court of appeals would eventually establish a briefing schedule, perhaps hear oral arguments, and at some point in the indefinite future, release an opinion. Not surprisingly, Mr. Gahl seeks emergency relief from this court, asking on behalf of Mr. Zingsheim "a chance, even if a small one, to preserve his own life[.]"<sup>8</sup> A majority of this court denies Mr. Zingsheim this chance, instead deferring—despite the life-or-death circumstances presented—the rather simple decision of whether to take the case or permit it to proceed before the court of appeals.

While appellate courts have all the luxury of time to ponder the law, Mr. Zingsheim, fighting for his life, does not. Circuit courts are best equipped to make these sorts of frontline decisions, in which time is of the essence. This court should summarily reverse the court of appeals' unreasoned decision to stay the circuit court order (or at the very least stay the court of appeals' unlawful stay)<sup>9</sup> while it carefully considers and resolves the legal issues presented. Such action falls well within our constitutionally-conferred authority.<sup>10</sup> Instead, the majority chooses to effectively deny Mr. Zingsheim any meaningful relief, all but guaranteeing him an irreversibly grave outcome, even if his attorneys ultimately prevail. I dissent.

I am authorized to state that Chief Justice ANNETTE KINGSLAND ZIEGLER and Justice PATIENCE DRAKE ROGGENSACK join this dissent.

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Sheila T. Reiff  
Clerk of Supreme Court

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<sup>8</sup> Petition to Bypass at 7.

<sup>9</sup> State v. Scott, 2018 WI 74, ¶¶40–41, 382 Wis. 2d 476, 914 N.W.2d 141 ("The court of appeals should explain its discretionary decision-making to ensure the soundness of that decision-making and to facilitate judicial review. We therefore conclude that the court of appeals' failure to explain its exercise of discretion in the instant case is an erroneous exercise of discretion.")

<sup>10</sup> Article VII, Section 3 of the Wisconsin Constitution confers on the Supreme Court superintending authority "over all courts," which "endows this court with a power that is indefinite in character, unsupplied with means and instrumentalities, and limited only by the necessities of justice." Arneson v. Jezwinski, 206 Wis. 2d 217, 225, 556 N.W.2d 721 (1996).