

Wisconsin Supreme Court and Court of Appeals Case Access

Allen Gahl v. Aurora Health Care, Inc.

Appeal Number 2021AP001787 - FT

Supreme Court

CASE HISTORY

Status	Court	Filing Date	Anticipated Due Date	Activity
PEND	SC			Awaiting Assignment
OCCD	CA	10-13-2021		Sua Sponte Filed By: Michael Johnson Comment: Sua to check urgency of petition
OCCD	SC	06-05-2023		Remittitur
OCCD	SC	05-02-2023		Published Opinion Citation 989 N.W.2d 561
OCCD	SC	05-02-2023		Opinion/Decision Judge Panel: Roggensack, Bradley, Ziegler, Bradley, Dallet, Hagedorn, Karofsky Opinion: Opinion Decision: Affirmed Pages: 13 Written by: Bradley, Ann Walsh Bradley, Rebecca Grassl Wrote Dissenting Opinion 41 pages. Additional Judge Action:25 additional pages of appendix Order Text: The decision of the court of appeals is affirmed. Comment: Opinion/Decision - Supreme Court
OCCD	SC	05-01-2023		Public Domain Citation Comment: PDC No: 2023 WI 35
OCCD	SC	01-17-2023		Oral Argument Comment: 2nd case, 9:45 a.m. (State Capitol SC Hearing Room) January Oral Argument Calendar. Karen L. Mueller for Petitioner-Respondent-Petitioner, Jason J. Franckowiak for Respondent-Appellant
OCCD	SC	12-22-2022		Letter/Correspondence Comment: Cover Letter to Brief of Amicus Curiae (Association of American Physicians and Surgeons (AAPS))

OCCD SC 12-22-2022 Brief of Amicus Curiae/Non-Party
[Brief of Amicus Curiae \(Association of American Physicians and Surgeons\)](#)
Filed By: (O'Sullivan, Rory)
Comment: Association of American Physicians and Surgeons (AAPS)

OCCD SC 12-15-2022 Letter/Correspondence
Comment: Cover Letter to Brief of Amicus Curiae(Front Line COVID-19 Critical Care Alliance (FLCCC))

OCCD SC 12-15-2022 Brief of Amicus Curiae/Non-Party
[Brief of Amicus Curiae \(Front Line Covid-19 Critical Care Alliance\)](#)
[Appendix to Brief of Amicus Curiae \(Front Line Covid-19 Critical Care Alliance\)](#)
Filed By: Joseph Voiland
Comment: Front Line COVID-19 Critical Care Alliance (FLCCC)

OCCD SC 12-07-2022 Letter/Correspondence
Comment: Cover Letter to Brief of Amicus Curiae (American Medical Association and the Wisconsin Medical Society)

OCCD SC 12-07-2022 Brief of Amicus Curiae/Non-Party
[Brief of Amicus Curiae \(American Medical Association and the Wisconsin Medical Society\)](#)
Filed By: Patricia Putney
Comment: American Medical Association and the Wisconsin Medical Society

OCCD SC 12-05-2022 Letter/Correspondence
Comment: Cover Letter to Reply Brief-Supreme Court Cover Letter - Reply Brief-Supreme Court

OCCD SC 12-02-2022 Reply Brief-Supreme Court
[Reply Brief-Supreme Court](#)
Filed By: Karen Mueller

OCCD SC 12-01-2022 Motion to File Amicus/Non-Party Brief
Filed By: (O'Sullivan, Rory)
Submit Date: 12-2-2022
Decision: (G) Grant
Decision Date: 12-2-2022
IT IS ORDERED that motion for leave to file non-party brief amicus curiae is granted. The amici's brief shall be filed on or before December 27, 2022; and
IT IS FURTHER ORDERED that the motion for admission of Attorney Schlafly pro hac vice is granted. A copy of SCR 10.03(4), setting forth the requirements for attorneys appearing pro hac vice, is attached to the moving party's order.
Comment: Association of American Physicians and Surgeons (AAPS) 12/02/2022 Court Order

OCCD SC 12-01-2022 Motion for Pro Hac Vice Admission
Filed By: (O'Sullivan, Rory)
Submit Date: 12-2-2022

Decision: (G) Grant

Decision Date: 12-2-2022

IT IS ORDERED that motion for leave to file non-party brief amicus curiae is granted. The amici's brief shall be filed on or before December 27, 2022; and

IT IS FURTHER ORDERED that the motion for admission of Attorney Schlafly pro hac vice is granted. A copy of SCR 10.03(4), setting forth the requirements for attorneys appearing pro hac vice, is attached to the moving party's order.

Comment: Attorney Andrew L. Schlafly

OCCD SC 12-01-2022 Letter/Correspondence

Comment: Cover Letter to Motions for Pro Hac Vice Status and to file an Amicus/Non-party Brief (Association of American Physicians and Surgeons)

OCCD SC 12-01-2022 Fee Paid

Comment: Receipt No: 22R 002729; Copy Fee

OCCD SC 11-28-2022 Letter/Correspondence

Comment: Cover Letter to Motion to File Amicus/Non-Party Brief (Front Line COVID-19 Critical Care Alliance)

OCCD SC 11-28-2022 Motion to File Amicus/Non-Party Brief

Filed By: Joseph Voiland

Submit Date: 11-28-2022

Decision: (G) Grant

Decision Date: 12-1-2022

IT IS ORDERED that motion for leave to file non-party brief amicus curiae is granted. The amicus brief shall be filed on or before December 15, 2022.

Comment: Front Line COVID-19 Critical Care Alliance (FLCCC)

OCCD SC 11-18-2022 Assigned for Oral Argument

OCCD SC 11-17-2022 Letter/Correspondence

Comment: Cover Letter to Response Brief-Supreme Court

OCCD SC 11-17-2022 [Response Brief-Supreme Court](#)
[Response Brief-Supreme Court](#)

Filed By: Jason Franckowiak

OCCD SC 11-15-2022 Motion for Pro Hac Vice Admission

Filed By: Patricia Putney

Submit Date: 11-16-2022

Decision: (G) Grant

Decision Date: 11-17-2022

IT IS ORDERED that motion for leave to file non-party brief amicus curiae is granted. The amici's brief shall be filed on or before December 7, 2022; and

IT IS FURTHER ORDERED that the motion for admission of Attorney Seel and Attorney Mahmood pro hac vice is granted. A copy of SCR 10.03(4), setting forth the requirements for attorneys appearing pro hac vice, is attached to the moving party's order.

Comment: Attorneys Ben Seel and Maher Mahmood

OCCD SC 11-15-2022 Motion to File Amicus/Non-Party Brief

Filed By: Patricia Putney
Submit Date: 11-16-2022
Decision: (G) Grant
Decision Date: 11-17-2022

IT IS ORDERED that motion for leave to file non-party brief amicus curiae is granted. The amici's brief shall be filed on or before December 7, 2022; and
IT IS FURTHER ORDERED that the motion for admission of Attorney Seel and Attorney Mahmood pro hac vice is granted. A copy of SCR 10.03(4), setting forth the requirements for attorneys appearing pro hac vice, is attached to the moving party's order.
Comment: American Medical Association and the Wisconsin Medical Society

OCCD SC 11-15-2022 Letter/Correspondence

Comment: Cover Letter to Motions for Pro Hac Vice and to File an Amicus/Non-Party Brief

OCCD SC 10-28-2022 Letter/Correspondence

Comment: Cover Letter to First Brief-Supreme Court

OCCD SC 10-28-2022 Order

IT IS ORDERED that the motion to waive the requirement of Wis. Stat 809.19(2)(ae) is denied. The Judicial Council Committees Note, 1978 to Wis. Stat. 809.19 states, the original record serves as the primary evidence of what occurred in the trial court. The appendix becomes a very abbreviated document with only those items absolutely essential to an understanding of the case The failure to include some item in the appendix has no effect on the ability or willingness of the court to consider any matter in the record. The citations to the record contained in petitioner-respondent-petitioners brief are sufficient to direct the court to Dr. Kory's testimony and exhibits. There is no need to reproduce that voluminous material again in the appendix.

PATIENCE DRAKE ROGGENSACK, J. wrote dissent.
CHIEF JUSTICE ANNETTE KINGSLAND ZIEGLER and JUSTICE REBECCA GRASSL BRADLEY join this dissent.
Comment: 10/25/2022 Court Order (Amended)

OCCD SC 10-28-2022 First Brief-Supreme Court
[First Brief-Supreme Court](#)

Filed By: Karen Mueller
Comment: First Brief-Supreme Court - Appendix

OCCD SC 10-24-2022 Motion for Miscellaneous Relief

Filed By: Karen Mueller
Submit Date: 10-24-2022
Decision: (D) Deny
Decision Date: 10-25-2022

IT IS ORDERED that the motion to waive the requirement of Wis. Stat 809.19(2)(ae) is denied. The Judicial Council Committees Note, 1978 to Wis. Stat. 809.19 states, the original record serves as the primary evidence of what occurred in the trial court. The appendix becomes a very abbreviated document with only those items absolutely essential to an understanding of the case. . . . The failure to include some item in the appendix has no effect on the ability or willingness of the court to consider any matter in the record. The citations to the record contained in petitioner-respondent-petitioners brief are sufficient to direct the court to Dr. Korys testimony and exhibits. There is no need to reproduce that

voluminous material again in the appendix.

ANNETTE K. ZIEGLER, C.J., PATIENCE DRAKE ROGGENSACK, and REBECCA GRASSL
BRADLEY, JJ., dissent.

Comment: Renewed Motion to Allow an Appendix to be eFiled in Multiple Parts 10/25/2022 Court Order
Envelopes - Renewed Motion to Allow Appendix to be eFiled in Multiple Parts

OCCD SC 10-18-2022 Motion for Miscellaneous Relief

Filed By: Karen Mueller

Submit Date: 10-19-2022

Decision: (D) Deny

Decision Date: 10-20-2022

IT IS ORDERED that the motion to waive the requirement of Wis. Stat 809.19(2)(ae), which provides that, The appendix shall be filed as a single document is denied. Petitioner-respondent-petitioner is encouraged to attempt to reduce the size of the appendix so that it can be filed as a single document. In addition, petitioner-respondent-petitioner is directed to the 2021 Comment to 809.19, which states, In the event of a very large appendix that cannot be electronically filed as a single document due to the size limitations of the system, s. 809.801(8) directs the user to contact the clerk of court for assistance. Petitioner-respondent-petitioner is instructed to contact the e-filing support line at (800) 462-8843 for assistance in filing the appendix as a single document. If, after due diligence, petitioner-respondent-petitioner is still unable to file the appendix as a single document, he may renew his motion to file a multi-volume appendix but shall inform the court of the efforts he has taken to comply with the requirements of 809.19(2)(ae); and,

IT IS FURTHER ORDERED that the motion to reduce from 22 to 11 the required number of copies of the appendix that must be physically filed is denied; and,

IT IS FURTHER ORDERED that the motion for an extension of time to file petitioner-respondent-petitioners opening brief is granted. Petitioner-respondent-petitioner shall have until November 2, 2022 to properly file his opening brief and appendix.

Comment: Motion to file Appendix in Multiple Parts and to Limit Amount of Physical Submissions
10/20/2022 Court Order

OCCD SC 10-18-2022 Motion to Extend Time

Filed By: Karen Mueller

Submit Date: 10-19-2022

Decision: (G) Grant

Decision Date: 10-20-2022

IT IS ORDERED that the motion to waive the requirement of Wis. Stat 809.19(2)(ae), which provides that, The appendix shall be filed as a single document is denied. Petitioner-respondent-petitioner is encouraged to attempt to reduce the size of the appendix so that it can be filed as a single document. In addition, petitioner-respondent-petitioner is directed to the 2021 Comment to 809.19, which states, In the event of a very large appendix that cannot be electronically filed as a single document due to the size limitations of the system, s. 809.801(8) directs the user to contact the clerk of court for assistance. Petitioner-respondent-petitioner is instructed to contact the e-filing support line at (800) 462-8843 for assistance in filing the appendix as a single document. If, after due diligence, petitioner-respondent-petitioner is still unable to file the appendix as a single document, he may renew his motion to file a multi-volume appendix but shall inform the court of the efforts he has taken to comply with the requirements of 809.19(2)(ae); and,

IT IS FURTHER ORDERED that the motion to reduce from 22 to 11 the required number of copies of the appendix that must be physically filed is denied; and,

IT IS FURTHER ORDERED that the motion for an extension of time to file petitioner-respondent-petitioners opening brief is granted. Petitioner-respondent-petitioner shall have until November 2, 2022 to properly file his opening brief and appendix.

See BR1 event due on 11-2-2022

Comment: Motion to Extend Time (BR1)

OCCD SC	09-14-2022	Caption Amended
OCCD SC	09-14-2022	Court Changed to Supreme Court
OCCD CA	09-13-2022	Fee Paid Comment: Receipt No: 22R 002002
OCCD CA	07-20-2022	Final Publication
OCCD SC	07-08-2022	Letter/Correspondence Comment: Cover Letter to Response to Petition for Review
OCCD CA	06-29-2022	Published Opinion Citation 403 Wis. 2d 539
OCCD CA	06-29-2022	Published Opinion Citation 977 N.W.2d 756
OCCD CA	06-29-2022	Opinion Ordered Published Comment: Opinion Ordered Published - Order; Opinion Ordered Published - Decision
OCCD CA	06-29-2022	Public Domain Citation Comment: PDC No: 2022 WI App 29
OCCD CA	06-27-2022	Fee Paid Comment: Receipt No: 22R 001379
OCCD SC	06-24-2022	Petition for Review Response to Petition for Review Petition for Review Filed By: Karen Mueller Submit Date: 7-11-2022 Decision: (G) Grant Decision Date: 9-14-2022 IT IS ORDERED that the petition for review is granted. Motion Response Filed By: Randall Guse Submit Date: 7-11-2022 Comment: Petition for Review and Appendix Petition for Review - Appendix
OCCD CA	05-25-2022	Opinion/Decision Judge Panel: Grogan, Kornblum, Neubauer Opinion: Opinion Decision: Reversed Pages: 38 Written by: Kornblum, Lori Grogan, Shelley A. Wrote Dissenting Opinion 17 pages.

Order Text: Order reversed
Comment: Opinion/Decision

OCCD CA	01-25-2022	Submitted - Other
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OCCD CA	01-13-2022	Record and Briefs Sent to District 2
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OCCD CA	01-12-2022	Memo Reply Brief Memo Reply Brief
	Filed By: Jason Franckowiak	

OCCD CA	01-05-2022	Memo Brief of Respondent Brief of Respondent
	Filed By: Karen Mueller	

OCCD CA	12-10-2021	Motion for Miscellaneous Relief
	Filed By: Jason Franckowiak	
	Submit Date: 12-13-2021	
	Decision: (O) Other	
	Decision Date: 1-5-2022	
	IT IS ORDERED that the motion to decide the appeal without a respondents brief is denied.	
	IT IS FURTHERED ORDERED that the respondents memorandum brief submitted on December 20, 2021, is accepted for filing.	
	Motion Response	
	Filed By: Karen Mueller	
	Submit Date: 12-14-2021	
	Comment: Motion to Move Appeal Forward without BRS	

OCCD CA	11-24-2021	Memo Brief of Appellant Brief of Appellant
	Filed By: Jason Franckowiak	

OCCD CA	11-09-2021	Record
	Comment: 1-1 to 78-1 ELECTRONICALLY FILED	

OCCD CA	11-02-2021	Other Papers
	Comment: Copy of transmittal notice for appeal and copy of rec. cert. filed	

OCCD CA	10-26-2021	Hold Status
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OCCD SC	10-25-2021	Order
	IT IS ORDERED that the petition for bypass is denied. The petition presents unresolved questions of fact and fails to establish that this case presents a sufficiently well-developed legal issue that meets our criteria for review.	
	REBECCA GRASSL BRADLEY, J. wrote dissent.	

Chief Justice ANNETTE KINGSLAND ZIEGLER and Justice PATIENCE DRAKE ROGGENSACK join the dissent.

Comment: Court Order (Bypass)

OCCD SC 10-22-2021 Response

Comment: Joint status report re settlement negotiations per 10/21/21 CTO; 10/22/21 - Properly signed copy filed; 10/22/21 - paper copies filed

OCCD SC 10-21-2021 Order

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. wrote dissent.

Chief Justice ANNETTE KINGSLAND ZIEGLER and Justice PATIENCE DRAKE ROGGENSACK join this dissent.

See BYP event filed on 10-20-2021

OCCD CA 10-21-2021 Notice of Appearance

Comment: Attorney Franckowiak for appellant per notice of appearance.

OCCD CA 10-21-2021 Case Assigned on Fast Track

OCCD CA 10-21-2021 Pro Hac Vice Letter

OCCD CA 10-21-2021 Notif. Sent-Filing of LVO & Court Record

OCCD CA 10-21-2021 Statement on Transcript

Filed By: Randall Guse

Status: Prev. Filed

OCCD CA 10-21-2021 Copy of Order Granting Leave - from Cir. Ct.

OCCD SC 10-20-2021 Fee Paid

Comment: Receipt No: 21R 002430

OCCD SC 10-20-2021 Petition to Bypass

Filed By: Karen Mueller

Submit Date: 10-20-2021

Decision: (D) Deny

Decision Date: 10-25-2021

IT IS ORDERED that the petition for bypass is denied. The petition presents unresolved questions of fact and fails to establish that this case presents a sufficiently well-developed legal issue that meets our criteria for review.

REBECCA GRASSL BRADLEY, J. wrote dissent.
Chief Justice ANNETTE KINGSLAND ZIEGLER and Justice PATIENCE DRAKE ROGGENSACK join the dissent.

Motion Response

Filed By: Michael Johnson

Submit Date: 10-22-2021

This motion contains court order(s).

Comment: 10/22/21 - paper copies of response filed

OCCD CA 10-20-2021 Sua Sponte

Filed By: Unassigned District 2

Submit Date: 10-20-2021

Decision: (G) Grant

Decision Date: 10-21-2021

ORD that the appeal will be submitted to the court on the expedited appeals calendar. The appellant shall file a memorandum brief within 14 days of the filing of the record in the Court of Appeals. The respondent shall file a memorandum brief within 14 days of the receipt of the appellant's brief. Those briefs shall not exceed 15 pages if a monospaced font is used or 3,300 words if a proportional font is used. The reply brief, not to exceed 7 pages or 1,540 words, shall be filed within 7 days of receipt of the respondent's brief. The briefs shall comply with the Expedited Appeals Rules for Briefing that are attached to this order. The issues to be briefed are set forth in this courts October 14, 2021 order. Any deviation from the terms of this scheduling order may result in the appeal being removed from the expedited appeals program.

Comment: 10/21/21 Court Order

OCCD CA 10-19-2021 Response

Comment: Response from Respondent per 10/14/21 CTO requesting expedited briefing.

OCCD CA 10-18-2021 Response

Comment: Response from Appellant per 10/14/21 CTO requesting expedited briefing

OCCD CA 10-14-2021 Order Granting Leave Filed in Circuit Court

OCCD CA 10-13-2021 Notice of Appearance

Comment: Randal Guse for Aurora Health Care

OCCD CA 10-13-2021 Fee Paid

Comment: Receipt No: 21R 002374

OCCD CA 10-12-2021 Non-Final Order of Circuit Court

OCCD CA 10-12-2021 Petition for Leave to Appeal

Filed By: Michael Johnson

Submit Date: 10-13-2021

Decision: (G) Grant

Decision Date: 10-14-2021

IT IS ORDERED that the petition for leave to appeal is granted, without costs. A copy of this order has been forwarded to the clerk of the circuit court. Pursuant to WIS. STAT. RULE 809.11(2), the clerk of the circuit court or responsible court official shall return the copy of the order granting this petition and the docket entries maintained pursuant to WIS. STAT. 59.40 to the clerk of this court within three days of receipt of the order. IT IS FURTHER ORDERED that the order and further circuit court proceedings are stayed pending resolution of this appeal. See WIS. STAT. 808.07(2)(a).

IT IS FURTHER ORDERED that the parties shall have five days from the date of this order to advise this court whether they desire an expedited briefing schedule. Generally, an appeal is appropriate for the expedited appeals calendar if it raises no more than three issues, the parties' briefs will not exceed fifteen pages in length and the briefs can be filed in a shorter time than normally allowed. See WIS. STAT. RULE 809.17(1); Wis. Ct. App. IOP VII (Aug. 1, 2018). This court will set the briefing schedule upon the filing of those responses.

Motion Response

Filed By: Michael Johnson

Submit Date: 10-13-2021

Comment: order to show cause hearing 10/13/21 at 1:30 pm PLV with Appendix (PLV refiled with corrected electronic signature)
