

COURT OF APPEALS OF WISCONSIN, DISTRICT IV

Herbal Aspect LLC v. Alexander Gish

Herbal Aspect LLC v. Gish, No. 2024AP2615 (Wis. Ct. App. Apr. 30, 2026) · No. 2024AP2615 · Decided April 30, 2026

SUMMARY

The Wisconsin Court of Appeals held that a circuit court retains authority under WIS. STAT. § 813.02(1) to consider a motion for a temporary injunction to preserve the parties’ rights pending arbitration, notwithstanding a stay under WIS. STAT. § 788.02. The court distinguished this authority from the court’s limited role in determining arbitrability and concluded that the circuit court erred by declining to decide the injunction motion on the merits. The court reversed in part, affirmed in part, and remanded for consideration of the temporary injunction motion.

CASE DETAILS

COURT	Court of Appeals of Wisconsin, District IV
WRITING FOR THE COURT	Blanchard, J.; Graham, P.J.; Taylor, J.
JURISDICTION	Wisconsin Court of Appeals, District IV
DECIDED	April 30, 2026
DOCKET	2024AP2615
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiffs appealed an order of the Dane County Circuit Court that stayed the civil action pending arbitration and declined to rule on the plaintiffs' motions for a temporary injunction and a declaration concerning Herbal Aspect LLC's legal representation. The Court of Appeals granted leave to appeal.
STANDARD OF REVIEW	Statutory and case-law interpretation are reviewed de novo. A circuit court's decision to grant or deny a temporary injunction is reviewed for an erroneous exercise of discretion, including an error of law or a mistaken belief that the court lacks authority to exercise its discretion. Contract interpretation is reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Herbal Aspect LLC, Alan Robinson v. Alexander Gish, Matthew Nelson, Rachel Cefalu

TOPICS

arbitration

injunctions

equitable relief

appellate procedure

standard of review

PRACTICE AREAS

civil procedure

arbitration

equitable remedies

contracts

limited liability companies

appellate procedure

QUESTIONS PRESENTED

1. Whether Wisconsin Statutes section 788.02, which requires a court to stay the trial of an action involving an arbitrable issue, categorically bars a circuit court from considering or issuing a temporary injunction to preserve the status quo pending arbitration.
2. Whether the arbitration rules incorporated into the operating agreement prohibited the plaintiffs from seeking court-ordered temporary injunctive relief.
3. Whether the circuit court erred by denying the motion for a declaration concerning Herbal Aspect LLC's legal representation.

HOLDINGS

1. Wisconsin circuit courts retain authority to consider and, when the statutory criteria are satisfied, issue a temporary injunction under Wisconsin Statutes section 813.02(1) in a civil action whose merits will be resolved through arbitration. Section 788.02's requirement to stay the trial does not categorically bar such pre-arbitration relief.
2. The incorporated Commercial Arbitration Rules of the American Arbitration Association contemplate and permit a party to seek interim measures, including court-ordered injunctive relief, pending arbitration.
3. The appellate court should remand for the circuit court to exercise its discretion in the first instance; it should not direct the circuit court to grant the injunction.
4. The denial of the declaration motion is affirmed because the plaintiffs' argument was undeveloped, failed to identify clearly the scope and legal basis of the requested declaration, and did not establish entitlement to the requested relief.

KEY QUOTATIONS

“We conclude that courts retain authority to issue temporary injunctions in advance of arbitration proceedings.” (¶1)

“One function is a circuit court’s obligation to determine whether a dispute must be arbitrated. This is a gatekeeping function: the court determines whether the dispute must be arbitrated. A separate function is a court’s ability to exercise its equitable power to preserve the status quo in a lawsuit pending resolution of the merits.” (¶22)

“This unambiguously contemplates that the parties may seek “interim measures” from a court, and Rule 38(a) establishes that “interim measures” includes “injunctive relief.”” (¶58)

FACTUAL BACKGROUND

The underlying dispute concerns ownership and control of Herbal Aspect LLC. The company's operating agreement requires controversies arising out of or relating to the agreement to be finally settled under the Commercial Arbitration Rules of the American Arbitration Association, using expedited procedures. While the defendants sought a stay pending arbitration, the plaintiffs sought a temporary injunction restraining actions involving company resources and employees, and separately sought a declaration that a law firm could represent Herbal Aspect. The arbitration rules included provisions allowing an arbitrator to issue interim injunctive relief and stating that a request for interim measures from a judicial authority is not incompatible with arbitration.

PROCEDURAL HISTORY

Alan Robinson filed a civil action concerning ownership and control of Herbal Aspect LLC. The defendants moved to stay the action under Wisconsin Statutes section 788.02 based on an arbitration provision in the company's operating agreement. While the stay motion was pending, the plaintiffs moved for a temporary injunction under section 813.02(1)(a) and for a declaration regarding counsel's authority to represent Herbal Aspect. The circuit court stayed the action and declined to address either motion on the merits, concluding that doing so would resolve substantive matters reserved for arbitration. The Court of Appeals affirmed the denial of the declaration motion, reversed the refusal to consider the temporary injunction motion, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must consider the Robinson parties' temporary injunction motion under the applicable standards, including the requirements of WIS. STAT. § 813.02(1)(a), while leaving the stay of the trial pending arbitration in place. The circuit court must exercise its discretion in the first instance and determine whether any injunction is appropriate in light of the current circumstances and the arbitration procedures available to the parties.

CASES CITED

- L.G. v. Aurora Residential Alts., Inc., 2019 WI 79, 387 Wis. 2d 724, 929 N.W.2d 590
- Meyers v. Bayer AG, 2007 WI 99, 303 Wis. 2d 295, 735 N.W.2d 448
- Zingsheim v. Aurora Health Care, Inc., 2023 WI 35, 413 Wis. 2d 418, 989 N.W.2d 561
- School Dist. of Slinger v. WIAA, 210 Wis. 2d 365, 563 N.W.2d 585 (Ct. App. 1997)
- Werner v. Hendree, 2011 WI 10, 331 Wis. 2d 511, 795 N.W.2d 423
- U.S. Bank Nat’l Ass’n v. Klein, 2024 WI App 7, 410 Wis. 2d 598, 3 N.W.3d 726
- Kemp v. Fisher, 89 Wis. 2d 94, 100, 277 N.W.2d 859 (1979)

- *Cirilli v. Country Ins. & Fin. Servs.*, 2009 WI App 167, 322 Wis. 2d 238, 776 N.W.2d 272
- *First Weber Grp., Inc. v. Synergy Real Est. Grp., LLC*, 2015 WI 34, 361 Wis. 2d 496, 860 N.W.2d 498
- *Midwest Neurosciences Assocs., LLC v. Great Lakes Neurosurgical Assocs., LLC*, 2018 WI 112, 384 Wis. 2d 669, 920 N.W.2d 767
- *Mortimore v. Merge Techs. Inc.*, 2012 WI App 109, 344 Wis. 2d 459, 824 N.W.2d 155
- *Marlowe v. IDS Prop. Cas. Ins. Co.*, 2013 WI 29, 346 Wis. 2d 450, 828 N.W.2d 812
- *Pruett v. WESTconsin Credit Union*, 2023 WI App 57, 409 Wis. 2d 607, 998 N.W.2d 529
- *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68-69 (2019)
- *Teradyne, Inc. v. Mostek Corp.*, 797 F.2d 43, 47-51 (1st Cir. 1986)
- *Ortho Pharm. Corp. v. Amgen, Inc.*, 882 F.2d 806, 811-13 (3d Cir. 1989)
- *Blumenthal v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 910 F.2d 1049, 1051-54 (2d Cir. 1990)
- *Performance Unlimited, Inc. v. Questar Publishers, Inc.*, 52 F.3d 1373, 1378-80 (6th Cir. 1995)
- *Sauer-Getriebe KG v. White Hydraulics, Inc.*, 715 F.2d 348, 351-52 (7th Cir. 1983)
- *Toyo Tire Holdings of Ams. Inc. v. Continental Tire N. Am., Inc.*, 609 F.3d 975, 979-82 (9th Cir. 2010)
- *State ex rel. CNG Fin. Corp. v. Nadel*, 2006-Ohio-5344, ¶¶15-17, 855 N.E.2d 473
- *City of Madison v. Frank Lloyd Wright Found.*, 20 Wis. 2d 361, 393-94, 122 N.W.2d 409 (1963)
- *Joint Sch. Dist. No. 1, City of Wisconsin Rapids v. Wisconsin Rapids Educ. Ass'n*, 70 Wis. 2d 292, 309, 234 N.W.2d 289 (1975)
- *J.J. Andrews, Inc. v. Midland*, 164 Wis. 2d 215, 223-24, 474 N.W.2d 756 (Ct. App. 1991)
- *McKenzie v. Warmka*, 81 Wis. 2d 591, 597, 260 N.W.2d 752 (1978)
- *Loren Imhoff Homebuilder, Inc. v. Taylor*, 2022 WI App 14, 401 Wis. 2d 510, 973 N.W.2d 836
- *Koschkee v. Evers*, 2018 WI 82, 382 Wis. 2d 666, 913 N.W.2d 878
- *State v. Schwind*, 2019 WI 48, 386 Wis. 2d 526, 926 N.W.2d 742
- *State v. Baudhuin*, 141 Wis. 2d 642, 648, 416 N.W.2d 60 (1987)
- *Doe 1 v. Madison Metro. Sch. Dist.*, 2022 WI 65, ¶¶37-40, 403 Wis. 2d 369, 976 N.W.2d 584