FILED
03-22-2024
Clerk of Circuit Court
Racine County
2022CV001324

STATE OF WISCONSIN CIRCUIT COURT RACINE COUNTY

KENNETH BROWN,

Plaintiff,

v.

WISCONSIN ELECTIONS COMMISSION,

and

TARA McMENAMIN,

Defendants,

and

DEMOCRATIC NATIONAL COMMITTEE, WISCONSIN ALLIANCE FOR RETIRED AMERICANS, BLACK LEADERS ORGANIZING FOR COMMUNITIES,

Intervenor-Defendants.

Case No. 22-CV-1324
Case Code: 30703

REPLY BRIEF IN SUPPORT OF MOTION TO STAY AMENDED DECISION AND ORDER PENDING APPEAL

Intervenor-Defendant Democratic National Committee (DNC) asked this Court to stay its Amended Decision and Order (Dkt. 99) pending the ongoing appeal of that order. (Dkt. 131) Plaintiff Kenneth Brown responded (Dkt. 153), and DNC hereby replies, noting that, while Brown accurately stated the governing standard, he entirely misapplied that standard in an unavailing effort to rebut the propriety of a stay here. Properly applied in accord with precedent, the governing legal standard makes clear that a stay is not only appropriate, but necessary. DNC's motion should be granted.

I. Brown Analogizes to Inapposite Case Law.

Brown's analysis goes awry from the outset. He begins by directing the Court to two cases, suggesting this Court need look no further. (Dkt. 153 at 2 (citing *Wis. Legislature v. Palm*, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900 and *Serv. Emps. Int'l Union, Local 1 v. Vos*, 2020 WI 67, 393 Wis. 2d 38, 946 N.W.2d 35)) But neither case sheds any meaningful light here. The language Brown quotes from *Palm*—which he fails to mention comes from a footnote to one of several concurrences—is of little worth here, given that the authoring Justice expressly acknowledged no stay had been requested. *Palm*, 2020 WI 42, ¶120 n.10 (Kelly, J., concurring). His analysis was based on a hypothetical—"if [the legislature] had requested [a stay]." *Id.* Hardly binding, let alone vetted, Supreme Court precedent.

But more damning is the fact that a majority of the Justices in *SEIU* made clear that the Court's conclusion—that because it found the statute unconstitutional, it need not consider the other stay factors—hinged entirely on the fact that the Supreme Court has the final say on a statute's constitutionality. As the Court explained, "the ultimate result is no longer in doubt because there is no further judicial review." *SEIU*, 2020 WI 67, ¶118. Indeed, the Court was eminently clear that, "[i]f we were the circuit court, or the court of appeals … consideration of each of the remaining factors would be necessary." *Id.* Enough said.

In sum, these cases reinforce, not rebut, the necessity of applying the four-factor test for a stay. And, properly applied, that test shows that a stay is not only appropriate, but also necessary.

II. Brown Distorts and Denies DNC's Irreparable Harm.

According to Brown, under this Court's order, "No one's right to vote is impacted in any way" and "DNC will suffer no harm from the Court's decision." (Dkt. 153 at 4, 5) Both assertions are false. They contradict this Court's prior finding in granting DNC's motion to intervene, which was premised on recognizing that the relief Brown requested in this lawsuit sought "to severely restrict Wisconsin voters' ability to successfully exercise their right to vote absentee." (Dkt. 19 at 7) And they ignore DNC's explanation that disrupting settled patterns of early voting will be confusing to voters—and likely dissuasive to some. These foreseeable harms "cannot be mitigated

or remedied upon conclusion of the appeal," which "must weigh in favor of" granting the stay. *Waity v. LeMahieu*, 2022 WI 6, ¶57, 400 Wis. 2d 356, 969 N.W.2d 263 (quoted source omitted).

DNC focuses its work on persuading, activating, and turning out voters. As DNC's motion notes, in the absence of a stay, DNC will have no choice but to divert resources from their intended purposes to instead educate its members and supporters about a significant change in absentee-voting procedures. The resulting effects on DNC's ability to execute its plans for the November general election cannot be remedied later, as all of DNC's plans and efforts build toward Election Day. (Dkt. 131, ¶28) Brown carps that the DNC "offer[s] no proof to support these claims whatsoever" (Dkt. 153 at 4), but that is incorrect—DNC cites record testimony in this case. (Dkt. 131, ¶28 (citing Dkt. 20, ¶7)) Brown's inability to rebut this evidence is not grounds to deny its existence. Brown has no answer and thereby concedes the point. *See, e.g.*, *Dietscher v. Pension Bd. of Emps.' Ret. Sys. of Milwaukee*, 2019 WI App 37, ¶49, 388 Wis. 2d 225, 932 N.W.2d 446 (failure to refute an argument constitutes a concession). As DNC has previously explained, in the absence of a stay, it (as well as its members and constituents) will face several distinct irreparable harms that are significant, such that DNC is "required to show only 'more than the mere possibility of success on the merits.'" *Waity*, 2022 WI 6, ¶57 (quoting *State v. Gudenschwager*, 191 Wis. 2d 431, 441, 529 N.W.2d 225 (1995) (per curiam)).

III. Brown Erroneously Insists that There Is No Likelihood of Appellate Reversal.

Next, Brown insists that "Movants have no likelihood of success on appeal." (Dkt. 153 at 6) This is both obvious overstatement and an abnegation of Wisconsin law. Brown concedes that de novo review applies here. (*Id.* at 7) But he insists this does not matter, ignoring our Supreme Court's repeated holding that the prospect of de novo review ***itself*** meets this factor of the stay analysis. *See, e.g.*, *Waity*, 2022 WI 6, ¶57; *see also* orders cited in Dkt. 131, ¶¶15, 31-32.

Even setting aside this binding precedent that treats de novo review as de facto satisfaction of this factor, Brown's analysis is incorrect. Brown insists that "[t]he issues in this case are not complicated, and Wisconsin law is clear." (Dkt. 153 at 6) But his boasts contradict the record here. The Wisconsin Elections Commission, the Racine City Clerk, and the three Intervenor-Defendants

all read the statute differently than he does. Where reasonable minds can disagree, it necessarily follows that the appellate court may reach a conclusion differing from the one the circuit court adopted. *See, e.g.*, *Waity*, 2022 WI 6, ¶53; *JusticePoint v. City of Milwaukee*, No. 2023AP1970, unpublished order at 5 (Wis. Ct. App. Nov. 6, 2023) ("Recent Wisconsin Supreme Court authority dictates, however, that, when considering the likelihood of success on appeal, trial courts should 'consider[] how other reasonable jurists on appeal may have interpreted the relevant law and whether they may have come to a different conclusion.'" (quoted source omitted)) [opinion attached]. Brown asks this Court to "rel[y] on its own interpretation of statutes," which no appellate court "had previously interpreted, to conclude that an appeal would be meritless." *Waity*, 2022 WI 6, ¶53. But the path Brown recommends leads directly into reversible error. No matter how confident this Court may be in its own conclusions, the appellate court may well come to contrary conclusions, and the stay standard expressly requires this Court to acknowledge as much. *Id.*[1]

IV. Brown Overstates the Harm He Would Face from a Stay.

Brown asserts that "[g]ranting the stay request" would "completely eviscerate" his statutory rights. (Dkt. 153 at 10) This hyperbole cannot obscure the absence of harms substantial enough to sway the stay analysis. As *Waity* makes clear, this factor does not require Brown be completely free from harm, but only that his harm not outweigh that facing DNC and other parties requesting a stay. 2022 WI 6, ¶58. Brown has shown no harm from prior elections, even when he disagreed with the City of Racine's alternate in-person absentee voting sites. Nothing has changed. While Brown would undoubtedly prefer that the City conform to his wishes, nothing transforms that preference into a threat of significant harm. Perhaps in the absence of any likelihood of DNC success on appeal or any irreparable harm to DNC in the absence of a stay, Brown's preference

[1] DNC does not address the position of Intervenor-Defendant Wisconsin Alliance for Retired Americans that this Court's decision is narrow and can fairly be interpreted as not imposing partisan-related requirements in determining the locations of alternate voting sites. (Dkt. 150) The Court's decision speaks for itself: "The filings in this case clearly indicated that the alternate sites chosen clearly favored members of the Democratic Party or those with known Democratic Party leanings. In this regard, this Court finds error in interpretation of law by WEC." (Dkt. 99 at 15)

would carry greater weight. But under any proper analysis of the stay factors here, Brown's preference is insufficient to sway the analysis in his favor.

V. Brown Dismisses All Harms to the Public that Would Occur Absent a Stay.

Brown argues that a stay would harm the public interest. (Dkt. 153 at 10-11) Here, too, he is incorrect. The public has an indisputable interest in full, fair, free elections administered properly under Wisconsin law. Brown falsely asserts that "[a]n election conducted in violation of state law cannot be undone," inappositely citing for support the Supreme Court's decision finding no violations of law in the 2020 election. (*Id.* at 10 (citing generally *Trump v. Biden*, 202 WI 91, 394 Wis. 2d 629, 951 N.W.2d 568)) Brown also falsely insists that, "there is no harm without a stay," because "the City of Racine can still use multiple voting locations in a way that complies with the statute" and voters can eschew in-person absentee voting. (*Id.*) This Court should reject Brown's myopic approach. Neither the City of Racine nor any other jurisdiction can comply with the statute as interpreted by the order because the order fails to provide any clarity on how a municipality can designate multiple alternate sites dispersed throughout its jurisdiction without running afoul of this Court's misinterpretation of the prohibition on providing any partisan advantage. This Court should vindicate the public interest by acting carefully to promote consistency, continuity, and avoid any chance of voter whiplash. Such care militates in favor of staying the order until an appellate court can rule on the merits.

VI. Additional Considerations, Unrebutted by Brown, Underscore the Need for a Stay.

Finally, as DNC argued in its motion, precedent establishes several additional considerations that favor a stay here. These include: the importance of preserving the status quo to avoid voter confusion especially where, as noted above, a significant likelihood exists that the appellate court might reach a different outcome and the party seeking the stay would suffer irreparable harm in the interim (Dkt. 131, ¶¶39-41); the imminent statutory deadline for municipalities across the state to designate alternate in-person absentee balloting sites (*id.*, ¶42 (citing Wis. Stat. §§ 6.855(1), 7.15(1)(cm)); and due process implications (*id.*, ¶¶43-44 (citing

cases)). By choosing not to mention, much less rebut, these considerations, Brown conceded each of them and their import. *See, e.g.*, *Dietscher*, 2019 WI App 37, ¶49.

CONCLUSION

For the reasons above, and the reasons set forth in DNC's motion (Dkt. 131), this Court should stay its order pending adjudication of the appeal in this matter.

Dated: March 22, 2024

Respectfully submitted,

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EXHIBIT A

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DISTRICT I

November 6, 2023

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Appeals Processing Division
Electronic Notice

Kathryn Z. Block
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Isaac S. Brodkey
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Erin K. Deeley
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Jeffrey A. Mandell
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Rachel E. Snyder
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You are hereby notified that the Court has entered the following order:

2023AP1970 JusticePoint, Inc. v. City of Milwaukee (L.C. # 2023CV5026)

Before Donald, P.J.

JusticePoint, Inc., moves for relief pending appeal, specifically, an order staying the dissolution of a temporary restraining order under which the City of Milwaukee is restrained from terminating its relationship with JusticePoint and instead maintains that relationship on the terms set forth in the parties' contract. The City filed a response to the motion and opposes the stay. For the reasons that follow, this court will grant the motion for a stay pending appeal.

In 2015, JusticePoint contracted with the City for the provision of Municipal Court Alternatives Program (MCAP) services for municipal court defendants. The contract was renewed periodically, with the most recent extension continuing through December 31, 2023. In

May 2023, however, the City sent a notice to JusticePoint terminating the contract effective July 11, 2023, relying on a contract provision permitting termination for convenience. JusticePoint responded with a notice of claim and then filed suit, alleging that the termination violated the Wisconsin Fair Dealership Law (WFDL), WIS. STAT. ch. 135 (2021-22).[1]

JusticePoint sought a temporary restraining order, and a circuit court judge (who we refer to here as "the circuit court") held a nonevidentiary hearing on July 10, 2023. Following review of documents and consideration of counsels' arguments, the circuit court concluded that JusticePoint showed a reasonable probability of success on the merits of its claim and granted a temporary restraining order, which was reduced to writing and filed on July 14, 2023. Pursuant to that temporary restraining order, the City was prohibited from proceeding with its planned termination of the relationship with JusticePoint and was required "to restore and perpetuate said relationship on the same terms as established by the parties' prior course of dealing."

JusticePoint next sought a preliminary injunction. On October 5, 2023, the matter proceeded to a nonevidentiary hearing on that request before a successor circuit court judge (who we refer to here as "the trial court"). The trial court concluded that the relationship between JusticePoint and the City did not meet the criteria for a dealership within the meaning of the WFDL. Therefore, the City was entitled to terminate the contract with JusticePoint without the constraints imposed by the WFDL. Accordingly, the trial court denied a preliminary injunction and dismissed JusticePoint's lawsuit.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Before the trial court adjourned the October 5, 2023 hearing, JusticePoint requested a stay of the trial court's decision. The trial court considered the request in light of a variety of factors and then granted a thirty-day stay, through November 6, 2023, to permit JusticePoint to determine whether it would appeal.[2] The trial court made clear, however, that it would not be willing to grant a stay pending appeal. JusticePoint filed a notice of appeal and now asks this court to grant a stay.

Pursuant to WIS. STAT. RULE 809.12, a person seeking relief pending appeal "shall file a motion in the trial court unless it is impractical to seek relief in the trial court." In this case, the transcript of the October 5, 2023 hearing includes a ruling by the trial court that it would not grant a stay pending appeal. Although the trial court allowed a thirty-day stay to permit JusticePoint to formulate its post-judgment strategy, the trial court concluded that "the idea of [the trial court] staying [its] decision until the Court of Appeals rules is, again, a bridge too far." The trial court's ruling that it would not grant a stay pending appeal demonstrates the impracticality of JusticePoint's seeking such a stay in the trial court. This court therefore turns to JusticePoint's motion.

"A stay pending appeal is appropriate where the moving party: (1) makes a strong showing that [the movant] is likely to succeed on the merits of the appeal; (2) shows that, unless a stay is granted, [the movant] will suffer irreparable injury; (3) shows that no substantial harm

[2] Thirty days from October 5, 2023, was Saturday, November 4, 2023. The parties and the trial court all appeared to agree that the final day of the stay was therefore November 6, 2023. *Cf.* WIS. STAT. § 801.15(1)(b). A subsequent notation in the trial court's electronic docket also reflects that the stay extends through November 6, 2023.

will come to other interested parties; and (4) shows that a stay will do no harm to the public interest." ***State v. Gudenschwager***, 191 Wis. 2d 431, 440, 529 N.W.2d 225 (1995). These factors, while not prerequisites, are interrelated considerations that must be balanced together. *See* ***id.*** More of one excuses less of another, but the movant must show "more than the mere 'possibility' of success on the merits." ***Id.*** at 441.

This court reviews a trial court's decision to grant or deny a stay pending appeal under an erroneous exercise of discretion standard. *See* ***id.*** at 439. We sustain a trial court's discretionary decision if the trial court: "(1) examined the relevant facts, (2) applied a proper standard of law, and (3) using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Id.*** at 440. While this is a deferential standard, "an exercise of discretion based on an erroneous application of the law is an erroneous exercise of discretion." ***State v. Carlson***, 2003 WI 40, ¶24, 261 Wis. 2d 97, 661 N.W.2d 51.

The first ***Gudenschwager*** factor requires the movant to show a likelihood of success on appeal. *See* ***id.***, 191 Wis. 2d at 441. In assessing this factor, we keep in mind that "[t]he standard of appellate review is one aspect of the likelihood of success on appeal." *See* ***Scullion v. Wisconsin Power & Light Co.***, 2000 WI App 120, ¶19, 237 Wis. 2d 498, 614 N.W.2d 565. While reversal of factual findings is unlikely, the chance of success on appeal increases where the applicable standard of review is *de novo*. *See* ***id.*** The absence of clear and binding precedent to guide the court to resolution of a complex issue further increases the possibility of success on appeal. *See* ***id.***

The appellate issues here will require a determination of whether the WFDL applies to the City's relationship with JusticePoint. Interpretation and application of the WFDL presents

questions of law that are reviewed *de novo*. *See* ***Benson v. City v. Madison***, 2017 WI 65, ¶20, 376 Wis. 2d 35, 897 N.W.2d 16. A key question is the parties' dispute regarding whether a dealership relationship exists between the City and JusticePoint. In ***Benson***, our supreme court observed that "[w]hether a relationship constitutes a 'dealership' under the WFDL is a recurring question for courts, in part because the definition of 'dealership' in the WFDL is both 'extremely broad and highly nuanced.'" ***Id.***, ¶34 (citations omitted). To resolve the question of whether a dealership exists under the WFDL, Wisconsin courts typically apply a three-part analysis. *See* ***id.***, ¶35. That three-part analysis involves a variety of considerations, and one prong involves the application of two "guideposts," *see* ***id.*** ¶49, which may be examined in light of ten enumerated "facets," *see* ***Ziegler Co., Inc. v. Rexnord, Inc.***, 139 Wis. 2d 593, 606, 407 N.W.2d 873 (1987); *see also* ***Benson***, 376 Wis. 2d 35, ¶49 n.15. "[T]here is rarely an obvious answer to the question of whether a business is a dealership." ***Benson***, 376 Wis. 2d 35, ¶34 (citation omitted).

As we have seen, the trial court here conducted an analysis of whether the WFDL applied in this case and concluded that the WFDL did not apply because "there was no dealership between [JusticePoint] and the City." When the trial court then turned to consideration of whether to stay its ruling, the trial court emphasized its confidence in the correctness of its decision and its view that the outcome was not "a close call." Recent Wisconsin Supreme Court authority dictates, however, that, when considering the likelihood of success on appeal, trial courts should "consider[] how other reasonable jurists on appeal may have interpreted the relevant law and whether they may have come to a different conclusion." *See* ***Waity v. LeMahieu***, 2022 WI 6, ¶53, 400 Wis. 2d 356, 969 N.W.2d 263. A determination that "reasonable judges on appeal could easily have disagreed with the circuit court's holdings" is likely to be determinative in assessing whether to grant a stay. *See* ***id.***

Here, the trial court considered a stay request in light of a record involving two decisions three months apart by two circuit court judges, both of whom assessed the application of the WFDL in light of virtually the same facts following arguments of counsel. One circuit court judge concluded that the WFDL likely applied; the other concluded that the WFDL clearly did not apply. Given these conflicting outcomes, the complexity of the analysis involved, and the Wisconsin Supreme Court's cautionary statement in ***Benson*** that "there is rarely an obvious answer" in a WFDL analysis, *see* ***id.***, 376 Wis. 2d 35, ¶34, ***Waity*** required the trial court to weigh the likelihood of success on appeal in favor of granting a stay. We conclude that the trial court erroneously exercised its discretion in assessing and weighing this factor.

The second ***Gudenschwager*** factor requires the movant to show irreparable injury if a stay is not imposed. *See* ***id.***, 191 Wis. 2d at 440. In assessing this factor, a trial court "must consider whether the harm can be undone if, on appeal, the [trial] court's decision is reversed." ***Waity***, 400 Wis. 2d 356, ¶57. The trial court here suggested that JusticePoint's potential injury was loss of revenue under the contract, and that such loss can be remedied following litigation to determine whether the city properly terminated the parties' contract. JusticePoint, however, also identifies other types of injuries, including its risk of losing full-time staff members that are trained to do the work required under JusticePoint's contract with the City, as well as reputational harm if the contract is abruptly terminated.

Moreover, the trial court's analysis of potentially irreparable injury was keyed to whether JusticePoint can receive an adequate remedy "under contract law." Thus, the analysis does not appear to take into account that, should JusticePoint prevail, it would be entitled under the WFDL to "rights and remedies in addition to those existing by contract or common law," *see* WIS. STAT. § 135.025(2)(c), including "injunctive relief against unlawful termination,

cancellation, nonrenewal or substantial change of competitive circumstances," *see* WIS. STAT. § 135.06. In the absence of a stay, the parties' relationship will be interrupted, and an interruption of the parties' relationship cannot be undone if JusticePoint prevails. In overlooking this statutory component of the potential injury here, the trial court erroneously exercised its discretion. *See* ***County of Dane v. PSC***, 2022 WI 61, ¶82, 403 Wis. 2d 306, 976 N.W.2d 790 (concluding that the circuit court erred by failing to consider whether harm done by allowing certain actions could be undone on appeal).

The third ***Gudenschwager*** factor requires a showing that no substantial harm will come to other interested parties. *See* ***id.***, 191 Wis. 2d at 440. As with the consideration of irreparable injury, the trial court focused on financial injury to the City, explaining that "this is an economic situation that affects the City." The City, however, frankly acknowledged at the October 5, 2023 hearing that the potential harm is "not so much an economic cost" but rather that a stay would thwart the City's wish to terminate the contract with JusticePoint. In this court, the City appears to identify the substantial harm at issue as continued professional interaction between the City and JusticePoint, suggesting that tension exists between the municipal court judges and JusticePoint personnel. Specifically, the City asserts that "to expect the parties to return to the same collegial working relationship they once had at this stage seems too much to ask." Neither party, however, directs our attention to authority suggesting that interpersonal tension among professionals is the kind of "substantial harm" referenced in ***Gudenschwager***.

Further, the materials that the parties have presented do not support the City's assertion that such harm exists. The City relied on a convenience clause as the basis for terminating the

contract with JusticePoint, and the submissions are virtually devoid of any additional reasons for the City's decision.[3] The trial court found that the City's reasons for terminating the contract were "not relevant," and the City agrees that the reasons for termination are "irrelevant for purposes of the issue [on appeal]." Absent something to support a contention that the City and JusticePoint are now unable to work together, the mere fact of continuing the working relationship does not suggest an actual harm, let alone a "substantial harm," to the City.

Moreover, the municipal court defendants who receive services provided under MCAP are interested parties who may suffer substantial harm from the actions taken in this case. *Cf.* ***Gudenschwager***, 191 Wis. 2d at 442-43 (considering that failure to grant a stay in that case would pose a risk of harm to third parties). The materials reflect that the services include "ability-to-pay assessment, mental health and AODA screening and treatment referral, recommendations for treatment or community service participation in lieu of payment of fees, and case management/compliance monitoring for any sentencing alternative accepted by the court." An amicus brief filed in the trial court by two former municipal court judges advises that the services at issue "enabled the defendants to be heard," allowed the judges to "determine a course of action which would properly hold defendants accountable without being incarcerated," and facilitated appointments of guardians *ad litem* for mentally incompetent defendants. The City does not appear to dispute that the services provide a benefit to members of the community. The City also appears to have acknowledged that, while it will provide some of the MCAP

[3] The trial court included a footnote in its decision stating that materials filed by JusticePoint reflect a "dispute centered on [JusticePoint's] practice of sharing citations with Legal Action.... There was an additional reference that the [Municipal Court] Judges have lost faith in [JusticePoint] as a result of this long-standing practice." This appears to be the only information presented regarding the City's substantive reasons for terminating the contract.

services through the municipal court judges, "[m]aybe some services are not – are not being done," and that no alternative is currently in place to provide those services. In sum, the materials reflect that a stay will not cause any party substantial harm and that other interested parties face the possibility of substantial harm in the absence of a stay.

The last ***Gudenschwager*** factor requires the moving party to show that a stay will not harm the public interest. *See* ***id.*** at 440. JusticePoint argues that MCAP advances the public interest, and the City does not appear to dispute that contention. To the contrary, the City quotes the trial court's observation that "this program, MCAP, is a wonderful program and serves the community." The trial court discounted this factor, however, stating that while the trial court recognized the value of the program, the question was "whether the WFDL applied. And the Court found it did not." The trial court therefore concluded that it would not grant a stay longer than thirty days.

In light of the foregoing, we conclude that JusticePoint has demonstrated an erroneous exercise of discretion in the trial court's balancing of factors when denying a stay during the pendency of an appeal in this case. "When reviewing a motion for a stay, a circuit court cannot simply input its own judgment on the merits of the case and conclude that a stay is not warranted. The relevant inquiry is whether the movant made a strong showing of success *on appeal*." ***Waity***, 400 Wis. 2d 356, ¶52. Given the applicable *de novo* standard of review on appeal, the nuanced questions involved, and our supreme court's acknowledgment that the key question rarely has an "obvious answer," *see* ***Benson***, 376 Wis. 2d 35, ¶34, the trial court should have recognized that reasonable jurists could differ about the outcome and that JusticePoint showed more than a mere possibility that it would prevail. That showing, coupled with the potential risk of irreparable injury to JusticePoint, the absence of substantial harm to the City,

and the interests of the public, combine to require a stay in this case. *See* ***Waity***, 400 Wis. 2d 356, ¶¶52-61.

Finally, we note the City's request that this court impose a bond to protect the City's financial interests if this court grants a stay pending appeal. This court will not entertain that request at this juncture. The City in effect seeks relief pending appeal, but the City does not show that it would be impractical to ask the trial court for that relief. *See* WIS. STAT. RULE 809.12. Accordingly, this court will do no more than grant the stay requested by JusticePoint and maintain the status quo by preventing the dissolution of the temporary restraining order imposed on July 14, 2023.

IT IS ORDERED that the motion to stay the dissolution of the temporary restraining order filed on July 14, 2023, is granted, and the temporary restraining order filed on that date shall remain in effect pending a decision by this court resolving the appeal.

Samuel A. Christensen
Clerk of Court of Appeals