

## **Summary of SC89862, *Ellen Wallingsford v. City of Maplewood***

Appeal from the St. Louis County circuit court, Judge James R. Hartenbach

**Attorneys:** Wallingsford was represented by James R. Dowd of James R. Dowd Attorney & Counselor at Law LLC in St. Louis, (314) 727-6777; and John E. Toma Jr. and Melissa M. Zensen of Toma Zensen LLC in St. Louis, (314) 361-1600. The city was represented by Mr. Terry L. Potter and Laura B. Staley of Husch Blackwell Sanders LLP in St. Louis, (314) 345-6000.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A woman appeals the circuit court's grant of summary judgment to the city for which she had worked as a police officer for approximately 18 years. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri reverses the circuit court's judgment and remands (sends back) the case for further proceedings. The circuit court treated the city's motion to dismiss as a motion for summary judgment but then failed to require the parties to comply with the applicable rule, which resulted in prejudice to the woman and a lack of uncontroverted evidence from which the court could determine whether summary judgment was appropriate. Further, there is a genuine issue of material fact as to whether there was ongoing discrimination that made work conditions so intolerable for the woman that she was forced to quit, resulting in what is called a constructive discharge. Because of this dispute, the court erred in finding that the woman failed to file her claim within 180 days of the last act of discrimination, as required by the applicable statute.

**Facts:** Ellen Wallingsford worked as a police officer for the city of Maplewood from August 26, 1986, until her resignation August 29, 2004. She deemed her resignation a constructive discharge as a direct result of alleged ongoing gender discrimination by the city. On January 20, 2005, she filed a charge of discrimination with the Missouri Human Rights Commission, which in January 2006 issued her a right-to-sue letter. She sued the city in March 2006, alleging gender discrimination, hostile work environment, retaliation and intentional infliction of emotional distress, specifically alleging the discrimination continued throughout her employment, including through the date of her constructive discharge. In May 2006, the city moved to dismiss Wallingsford's suit, asserting Wallingsford failed to identify any act of discrimination that occurred within the 180-day time frame permitted by statute. It later asserted, in its reply to Wallingsford's response, that she failed to allege sufficient evidence that she continued to experience discrimination through the final day of her employment. The court denied Wallingsford leave to file a supplemental affidavit detailing her working conditions during her final two months of employment. Instead, it entered summary judgment in the city's favor on

the ground that Wallingsford failed to allege discrimination occurring within 180 days of filing her complaint with the commission. Wallingsford appeals.

**REVERSED AND REMANDED.**

**Court en banc holds:** The circuit court erred in granting summary judgment in the city's favor on the basis that Wallingsford's claims were untimely. The court treated the city's motion to dismiss as a motion for summary judgment but then failed to require the parties to comply with the procedures of Rule 74.04. The court did not require the city to provide a statement of uncontroverted facts or a copy of all discovery, exhibits or affidavits on which its motion relied. The court also allowed the city to raise new issues, grounds or arguments – in the city's reply to Wallingsford's response – without giving Wallingsford the opportunity to respond by granting her leave to file a supplemental affidavit supporting her claim that she was discharged constructively. Constructive discharge occurs when an employer deliberately renders an employee's working conditions so intolerable that the employee is forced to quit. A claim of constructive discharge must be supported by a continuous pattern of discriminatory treatment, proof of which is fact-intensive. Constructive discharge that results from unlawful discrimination can constitute an alleged act of discrimination that is sufficient to satisfy the filing period imposed by section 213.075.1, RSMo 2000, which requires an individual alleging unlawful employment discrimination to file a complaint with the commission within 180 days of the alleged act of discrimination. Here, the 180-day period began July 24, 2004. Because there is a genuine issue of material fact as to whether Wallingsford was discharged constructively, however, and the court failure to comply with Rule 74.04 compromised the parties' ability to provide the court with uncontroverted facts, the court could not determine whether summary judgment was appropriate.