COURT OF APPEALS
DECISION
DATED AND FILED

November 3, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2025AP891 **Cir. Ct. No. 2024CV151**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

MATTHEW KLEINHANS,

PETITIONER-APPELLANT,

V.

LINCOLN COUNTY SHERIFF'S OFFICE,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Lincoln County: MICHAEL W. SCHIEK, Judge. *Affirmed.*

Before Stark, P.J., Hruz, and Gill, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Matthew Kleinhans, pro se, appeals an order denying his petition for a writ of mandamus, which sought an order requiring the Lincoln County Sheriff's Office ("the Sheriff") to release an unredacted email that

would provide Kleinhans with the name of the individual who submitted a tip regarding Kleinhans' alleged possession of a gun at the Lincoln County Courthouse. On appeal, Kleinhans argues that the circuit court erred in its application of the law. Kleinhans additionally contends that certain statements and alleged misunderstandings by the court with respect to a surveillance video that Kleinhans also requested demonstrate that the court was biased against him and constituted a due process violation. In response, the Sheriff asserts that Kleinhans' appeal is frivolous.

¶2 For the reasons articulated below, we conclude that the circuit court did not err by determining that the Sheriff's redaction of the individual's name in the email was appropriate pursuant to WIS. STAT. § 19.35 (2023-24)[1] and the balancing test prescribed by public records case law. Therefore, Kleinhans failed to establish a clear, specific legal right to the unredacted email, and summary judgment was appropriate. Additionally, we conclude that Kleinhans failed to prove his judicial bias claim. Finally, we deny the Sheriff's request to find Kleinhans' appeal frivolous and award attorney fees.

BACKGROUND

¶3 On November 27, 2023, law enforcement searched Kleinhans at the Lincoln County Courthouse after receiving information that Kleinhans might have a gun in his backpack. The responding officer told Kleinhans that the Sheriff had received an email that provided information that prompted the search. Law enforcement did not find a gun on Kleinhans.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

¶4 Kleinhans subsequently filed a public records request seeking, among other things, that email. In response, the Sheriff[2] produced the subject email, which summarized the allegations the Sheriff had received regarding Kleinhans' possible possession of a firearm. However, the Sheriff redacted the name of the individual who had submitted the allegations ("the reporter"). As justification for the redaction, the Sheriff stated:

> [P]ursuant to [the] WIS. STAT. § 19.35(1)(a) balancing test, all information that may identify the individual who notified law enforcement has been redacted. I believe the release of the reporter's name may deter others from providing law enforcement with intelligence that could be in the interest of public safety. The public interest in persons being able to notify law enforcement of potential security issues without fear of retribution or retaliation outweighs the public interest of the disclosure of personally identifying information of a source of security intelligence.

¶5 Kleinhans subsequently filed an identical, second public records request seeking the same email and the identity of the reporter. In response to Kleinhans' second public records request, the Sheriff stated it had no obligation under public records law to provide Kleinhans with an identical copy of the email already produced. Nonetheless, the Sheriff provided the redacted email again and asserted the same justification for the redaction of personally identifying information about the reporter.

¶6 Both of Kleinhans' public records requests also sought "body camera audio and/or video of the [November 27, 2023] search." The Sheriff stated that the only responsive records would be courthouse surveillance video,

[2] An office assistant from the Lincoln County Sheriff's Office responded to Kleinhans' public records request. Pursuant to WIS. STAT. § 19.33(1), the Sheriff is the legal custodian for the records of the Sheriff's Office. As such, we refer in this opinion to any action performed by the office assistant as being performed by the Sheriff.

and the Sheriff withheld any responsive video. The Sheriff's asserted basis for withholding the video was similar to the basis for withholding the email:

> [T]he release of any surveillance video may reveal security vulnerabilities within the system, which may be used by potential bad actors in pre attack planning. Therefore, I believe the public interest in protecting employees and citizens within the courthouse outweighs the public interest in disclosure of the courthouse surveillance footage.

At the time that Kleinhans' second, identical public records request was made to the Sheriff, the courthouse surveillance video had already been destroyed pursuant to the courthouse's practice to purge surveillance video after 121 days.

¶7 After his public records requests were denied, Kleinhans filed a petition for a writ of mandamus with the circuit court. Kleinhans specifically sought to compel the Sheriff to "immediately disclose the name of the individual who notified law enforcement." The petition did not contain a request for the Sheriff to be compelled to turn over the withheld courthouse surveillance video.[3]

¶8 The Sheriff sought summary judgment, arguing that there was no dispute of material fact and that Kleinhans' petition failed as a matter of law because the Sheriff had properly withheld the records pursuant to public records law. The Sheriff argued that Kleinhans could not meet one of the essential elements required for the issuance of a writ of mandamus, particularly, a "clear, specific legal right" to the release of the unredacted email, "which is free from substantial doubt." *See* ***Lake Bluff Hous. Partners v. City of South Milwaukee***, 197 Wis. 2d 157, 182, 540 N.W.2d 189 (1995) (citation omitted).

[3] After filing his initial petition, Kleinhans filed an amended petition. The only difference in the amended petition was an added request that the writ include an order that the Sheriff release the identity of the reporter within ten days.

¶9 Following briefing from the parties, the circuit court issued an oral ruling on the Sheriff's summary judgment motion. At the outset of the hearing, there was a discussion about the courthouse surveillance video that the Sheriff had withheld.

> THE COURT: We're here today because petitioner wants me to grant the writ of mandamus requiring the sheriff's department to provide the un-redacted email as well as the surveillance video from the courthouse.
>
> MATTHEW KLEINHANS: Objection.
>
> THE COURT: What's that?
>
> MATTHEW KLEINHANS: Um, the writ of mandamus does not ask or request the surveillance video. The respondent kept referring to the surveillance video, but if you look at the original writ of mandamus it only requests the name of the person who filed the complaint.
>
> THE COURT: All right, you don't want me to address the—you have it … on page 1 [of your summary judgment brief].
>
> MATTHEW KLEINHANS: Yep, so … in my response I put in there that the only reason I was addressing it is because there was no actual review of the footage of the security video. The [Sheriff] admitted that … they actually didn't have the video to do a balancing test the second time; therefore, they couldn't have done one under the statute, so that is only to highlight the [Sheriff]'s misstatements in why they were denying those records.
>
> THE COURT: So you don't want me to address that at all?
>
> MATTHEW KLEINHANS: There's no reason to address it, Your Honor.
>
> THE COURT: Okay. Was that your understanding, Ms. Johnson? I guess I didn't read that far into it, but that's fine.
>
> MS. JOHNSON: Judge, that was my understanding once I had received Mr. Kleinhans's response brief….
>
> ….
>
> THE COURT: Okay, all right, then I … was planning on addressing [the withholding of the courthouse surveillance video], but I … will not, so we're simply going to ask then

> for a writ of mandamus on the un-redacted email that was returned to you, correct?
>
> MATTHEW KLEINHANS: Correct, Your Honor.

The court proceeded to render its decision on the motion for summary judgment, omitting any analysis of the denial of the request for the courthouse surveillance video.

¶10 In that decision, the circuit court analyzed the Sheriff's application of the balancing test. It found that the Sheriff had properly applied the balancing test when the Sheriff determined that the "public interest in persons being able to notify law enforcement of potential security issues without fear of retribution or retaliation outweighs the public interest of disclosure [of] personally identifying information of a source of security intelligence." The court determined that the facts were undisputed and that Kleinhans could not establish a clear and specific legal right to the record that he sought to compel the Sheriff to release. On that basis, the court granted summary judgment to the Sheriff and dismissed Kleinhans' petition for a writ of mandamus.

¶11 This appeal follows. Additional facts will be provided below as necessary.

DISCUSSION

¶12 On appeal, Kleinhans makes a number of arguments, which can be condensed into two issues. First, Kleinhans asserts that the Sheriff—and the circuit court in its review of the Sheriff's determination—incorrectly applied public records law. Kleinhans argues that he has established a clear, legal right to the unredacted email and that the court's denial of his request for a writ of mandamus was in error. Second, Kleinhans claims that he was denied due process

by the court's alleged failure to adequately review his brief on summary judgment and by judicial bias.

I. Denial of Request for a Writ of Mandamus

¶13 The granting of a writ of mandamus compelling a government entity to take a certain action is an extraordinary legal remedy. WIS. STAT. § 781.01. Judgment granting a writ of mandamus will be entered only when the party seeking the writ can show that the writ is based on a "clear, specific legal right which is free from substantial doubt." ***Lake Bluff***, 197 Wis. 2d at 182 (citation omitted). In addition to showing that first element—a clear, legal right—the party seeking the writ must also establish three other elements: "(2) a positive and plain duty; (3) substantial damages; and (4) no other adequate remedy at law." ***Voces De La Frontera, Inc. v. Clarke***, 2017 WI 16, ¶11, 373 Wis. 2d 348, 891 N.W.2d 803 (citation omitted).

¶14 "Where a circuit court, determining a petition for writ of mandamus, has interpreted Wisconsin's open records law ... and has applied that law to undisputed facts, we review the circuit court's decision de novo." ***ECO, Inc. v. City of Elkhorn***, 2002 WI App 302, ¶15, 259 Wis. 2d 276, 655 N.W.2d 510. Our review benefits, however, from the analysis of the circuit court. ***Osborn v. Board of Regents of Univ. of Wis. Sys.***, 2002 WI 83, ¶12, 254 Wis. 2d 266, 647 N.W.2d 158.

¶15 It is public policy in Wisconsin that "all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." WIS. STAT. § 19.31. To accomplish this aim, the provisions of Wisconsin's public records law "shall be

construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business." ***Id.***

¶16 This presumption is strong, but it is not absolute. ***Hempel v. City of Baraboo***, 2005 WI 120, ¶28, 284 Wis. 2d 162, 699 N.W.2d 551. A legal custodian seeking to withhold a record, in the absence of a clear statutory or common law exception, must perform a balancing test to determine "whether the strong presumption favoring access and disclosure [of public records] is overcome by some even stronger public policy favoring limited access or nondisclosure." ***Id.*** "In other words, the custodian must determine whether the surrounding factual circumstances create an 'exceptional case' not governed by the strong presumption of openness." ***Id.***, ¶63 (citation omitted). An exceptional case is one where "the facts are such that the public policy interests favoring nondisclosure outweigh the public policy interests favoring disclosure, *notwithstanding* the strong presumption favoring disclosure." ***Id.***

¶17 The facts before the circuit court on Kleinhans' petition for a writ of mandamus were undisputed. Kleinhans made public records requests that were denied by the Sheriff. In those denials, the Sheriff stated that it had performed the balancing test and determined that it weighed in favor of nondisclosure. Specifically, the Sheriff determined that the public interest in persons being able to notify law enforcement of potential security issues—especially within a courthouse—without fear of retribution or retaliation outweighed the public interest in the disclosure of personally identifying information about those making such notifications. On review, the court concluded that the Sheriff had properly applied the balancing test, and we review the court's decision de novo. *See* ***ECO, Inc.***, 259 Wis. 2d 276, ¶15.

¶18 In its analysis, the circuit court relied on ***Hempel***, which is an instructive case. In ***Hempel***, the Wisconsin Supreme Court applied the balancing test to a public records request with similar facts. A police officer had filed a public records request with the city, his employer, seeking records regarding an investigation into the officer's alleged misconduct. ***Hempel***, 284 Wis. 2d 162, ¶¶6, 10. The city produced certain records with redactions of personally identifiable information about witnesses, based in part on the city's assertion that disclosure would discourage witnesses from providing information to the police department. ***Id.***, ¶¶15-16. In its de novo application of the balancing test, the supreme court noted the strong presumption in favor of disclosure, but it found that the public's interest in keeping the identity of witnesses private and confidential overcame the presumption. ***Id.***, ¶¶72, 80. The court specifically noted the chilling effect of disclosure in the future, stating that "complainants and witnesses will become less likely to make candid statements if they know that the accused may access their statements through an open records request." ***Id.***, ¶72.

¶19 Applying that same rationale here is appropriate given the similar facts. In his public records requests (and his petition for a writ of mandamus), Kleinhans explicitly seeks the identity of the person who alleged that Kleinhans may have possessed a firearm in the courthouse. The public interest in withholding the identity of those reporting relevant public safety information to the police is an interest of utmost importance. Those reporters must feel free to offer such information without fear of retribution and retaliation; otherwise, there will be a chilling effect that will prevent reporters from coming forward. Further, as the ***Hempel*** court identified, the balancing test is fact specific. ***Id.***, ¶¶63-64. Given the factual circumstances in this case, where the report was about the potential possession of a firearm in a county courthouse, preventing such a chilling

effect is paramount. The public's interest in the safety of public buildings, and its expectation of safety when entering courthouses, cannot be overstated. This is the kind of "exceptional" case where the facts are such that the relevant public interests favoring nondisclosure outweigh the public interests favoring disclosure. The strong presumption of complete public access has been overcome.

¶20 Kleinhans argues that the potential harm to the public interest referenced in the Sheriff's denials is too "speculative" to overcome the presumption of disclosure. However, Kleinhans' arguments on this point relate solely to the Sheriff's asserted basis for withholding the courthouse surveillance video and consist of no more than a cursory citation to case law with no analysis. We may decline to review an issue that is inadequately briefed. ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶21 Moreover, Kleinhans' argument is not properly before us on appeal because Kleinhans invited any error he claims in the circuit court's decision with respect to the surveillance video. *See* ***Shawn B.N. v. State***, 173 Wis. 2d 343, 372, 497 N.W.2d 141 (Ct. App. 1992) (stating that an appellant cannot complain of error induced by the appellant). It is undisputed that Kleinhans' request for a writ of mandamus did not seek release of the courthouse surveillance video. Although the court was prepared to make a ruling regarding the Sheriff's asserted basis for withholding the video, the court did not do so after Kleinhans clarified, at the outset of the motion hearing, that the video was not at issue. Kleinhans therefore cannot now complain that the court erred by failing to address his argument regarding the basis for withholding the courthouse surveillance video.

¶22 Kleinhans also argues that the identical responses by the Sheriff to his two public records requests constitute evidence that the Sheriff did not

properly perform the balancing test in response to the second request. In support of this argument, Kleinhans points to the fact that, at the time he made his second request, the courthouse surveillance video had already been destroyed. Again, any argument regarding an improper basis for withholding the courthouse surveillance video will not be reviewed by this court for the reasons noted above. However, we note that, while it might have been a better course to inform Kleinhans when responding to his second request that any responsive courthouse surveillance footage no longer existed, the Sheriff was not required to do so. *See* ***Journal Times v. Police & Fire Comm'rs Bd.***, 2015 WI 56, ¶102, 362 Wis. 2d 577, 866 N.W.2d 563.[4]

¶23 Having determined that the Sheriff properly withheld the redacted portion of the email, it necessarily follows that Kleinhans has not established a clear, legal right to the release of the unredacted email. As such, Kleinhans has failed to meet one of the requisite elements for a writ of mandamus. *See* ***Lake Bluff***, 197 Wis. 2d at 182. Failure to meet just one of the requisite elements is enough to mandate denial of a request for a writ. As such, the circuit court did not address the three other requisite elements, and we need not do so here. The court did not err by denying Kleinhans' request for a writ, and the court properly granted summary judgment dismissing Kleinhans' petition.

[4] We also note that Kleinhans' argument regarding the Sheriff's identical responses to his public records requests is undeveloped, given that he fails to explain why the video being destroyed would have made a difference during the Sheriff's second review of Kleinhans' request. In other words, he does not argue, and he cannot show, that the video revealed the identity of the reporter. Thus, the Sheriff's response was appropriate.

II. Due Process Claim

¶24 We turn now to Kleinhans' claims on appeal that the circuit court violated his right to due process. "The right to an impartial judge is fundamental to our notion of due process." ***Miller v. Carroll***, 2020 WI 56, ¶15, 392 Wis. 2d 49, 944 N.W.2d 542 (citation omitted). On a claim of judicial bias, we "presume that a judge has acted fairly, impartially, and without bias. To overcome that presumption, the burden is on the party asserting judicial bias to show bias by a preponderance of the evidence." ***Id.***, ¶16 (citations omitted). Bias can be either subjective or objective. ***State v. Gudgeon***, 2006 WI App 143, ¶20, 295 Wis. 2d 189, 720 N.W.2d 114. "Judges must disqualify themselves based on subjective bias whenever they have any personal doubts as to whether they can avoid partiality to one side." ***Id.*** The test for objective bias is "whether a reasonable person could question the judge's impartiality." ***Id.***, ¶21.

¶25 Kleinhans' argument on the alleged due process violation is largely undeveloped, but he is not alleging that the circuit court was "subjectively biased." That is, Kleinhans is not arguing that the circuit court had doubts about the court's ability to remain impartial. Kleinhans' argument as to bias is that the court did not give Kleinhans' submissions sufficient review. This is an allegation of objective bias.

¶26 Kleinhans' claim of bias is based on a single quote by the circuit court, which Kleinhans takes out of context. That single quote—i.e., "I guess I didn't read that far into it," which was made during the discussion about the courthouse surveillance video at the outset of the oral ruling—is easily understood when read within the court's ruling as a whole and the entirety of the record in this case.

¶27 It is clear that there was confusion on the part of the circuit court, as well as the Sheriff's counsel, around the exact request being made in Kleinhans' petition for a writ of mandamus. Both the court and the Sheriff's counsel initially believed that Kleinhans was seeking release of the courthouse surveillance video as well as the identity of the reporter. This uncertainty is understandable, given the content of the petition, which referred throughout to: (1) Kleinhans' request for the courthouse surveillance video; (2) the withholding of the video by the Sheriff; and (3) the Sheriff's asserted basis for withholding the video.[5] Kleinhans' brief opposing summary judgment did state at the outset that "[i]t should be noted that this [w]rit of [m]andamus has never sought access to the audio or video recordings of the [c]ourthouse."[6] Nonetheless, the remainder of Kleinhans' brief contained multiple arguments about the courthouse surveillance video.

¶28 Kleinhans asserts that the quote at issue reflects that the circuit court did not read his submissions. However, this notion is simply a misreading of the court's statement. It is evident that the court was explaining that it had not taken the statement in Kleinhans' brief as Kleinhans abandoning a request for the courthouse surveillance video *that had been referenced throughout the litigation*. In other words, the court did not read any further into the particular statement in Kleinhans' brief that he was abandoning his surveillance video claim and that he

[5] The confusion was also not surprising given the volume of additional documents Kleinhans had filed with the circuit court pertaining to an ongoing administrative matter in which Kleinhans was involved, during which he was asking the presiding administrative law judge to also compel a response to Kleinhans' public records requests.

[6] Kleinhans also made two assertions at the end of his affidavit in opposition to summary judgment about the writ he was seeking. First, he stated that his petition "only sought the names of the individuals who filed the unfounded false allegation." Second, he stated that "[t]he Sheriff's Office continues to argue against releasing security footage from the courthouse. This is a moot point and was never relevant [to] the [w]rit of [m]andamus."

raised it only in support of his claim that the Sheriff's second review of his open records request was incomplete. The court's reasoned analysis in its oral ruling reflected that the court had clearly read the entirety of Kleinhans' brief. In fact, the court made a specific reference to its thorough review during the motion hearing, stating: "I did review every piece of paper that came through. There's quite a bit of it." The court's statement that it "did not read that far into it," when read reasonably in the context of the entire litigation, does not support Kleinhans' claim of judicial bias.

¶29 Kleinhans also makes an undeveloped argument that the circuit court was biased because it did not address a particular argument Kleinhans made regarding the right of the public to know whether the reporter was a government official or if the reporter had a history of false claims. Kleinhans must offer material and reviewable facts showing objective bias instead of mere disagreement with the court's decisions. *See* ***Miller***, 392 Wis. 2d 49, ¶16. Kleinhans' bare assertion that the court was biased because it failed to address his argument is not supported by any specific facts in the record, and we decline to consider it further. *See* ***Pettit***, 171 Wis. 2d at 646-47.

¶30 Kleinhans has failed to offer sufficient evidence to overcome the presumption that the circuit court acted fairly, impartially, and without bias. *See* ***Miller***, 392 Wis. 2d 49, ¶16. No reasonable person, reviewing the record in full, could question the impartiality of the court. *See* ***Gudgeon***, 295 Wis. 2d 189, ¶21. Accordingly, Kleinhans' claims of judicial bias and a violation of his right to due process fails.

III. The Sheriff's Assertion that the Appeal is Frivolous

¶31 Finally, we address the Sheriff's request in its response brief that, pursuant to WIS. STAT. RULE 809.25(3), we find Kleinhans' appeal frivolous. A request in a response brief for costs and fees is not sufficient. ***Townsend v. Massey***, 2011 WI App 160, ¶28, 338 Wis. 2d 114, 808 N.W.2d 155. Rather, RULE 809.25(3) requires "[a] motion for costs, fees, and attorney fees," which must "be filed no later than the filing of the respondent's brief." We deny the Sheriff's request because it did not file a separate motion pursuant to RULE 809.25(3). Moreover, we could only award sanctions if we were to conclude that the entire appeal is frivolous, *see* ***Thompson v. Ouellette***, 2023 WI App 7, ¶44, 406 Wis. 2d 99, 986 N.W.2d 338, and it is unlikely we would have concluded that standard had been satisfied, especially as to the public records claim.

CONCLUSION

¶32 In summary, we conclude that the Sheriff properly applied the balancing test to determine that Kleinhans' public records requests should be withheld, and, as a result, Kleinhans could not establish a clear, legal right to the record requested. We also conclude that Kleinhans has failed to prove any bias on the part of the circuit court. Finally, we reject the Sheriff's request for attorney fees and costs, given that it did not timely file a sanctions motion pursuant to WIS. STAT. RULE 809.25(3). Accordingly, we affirm the circuit court's order that granted summary judgment to the Sheriff and dismissed Kleinhans' petition for a writ of mandamus, and we deny the Sheriff's request for attorney fees and costs on appeal.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.