COURT OF APPEALS
DECISION
DATED AND FILED

November 24, 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. 2025AP1608 **Cir. Ct. No. 2023CV187**

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

LEO KRIVICKAS AND REBECCA NITKE,

PLAINTIFFS-APPELLANTS,

V.

THREE LAKES SCHOOL DISTRICT AND THREE LAKES SCHOOL DISTRICT BOARD OF EDUCATION,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Oneida 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. Leo Krivickas and Rebecca Nitke (collectively, "Krivickas") appeal from a circuit court order granting summary judgment and dismissing their request for a declaratory judgment to prohibit the Three Lakes School District and the Three Lakes School District Board of Education (collectively, "Three Lakes") from constructing and operating a trap shooting range in the District's school forest. Krivickas argues that the court erred by determining that the authority to construct and operate a trap shooting range in a school forest is included within the broad statutory powers prescribed to school boards.

¶2 For the reasons explained below, we conclude that there is no statutory or other prohibition against a school board constructing or operating a trap shooting range in a school forest and, therefore, the circuit court did not err in its application of the law. We further conclude that any question as to whether state and federal law regarding students' possession of firearms on school property can be harmonized with state law granting school boards the authority to operate a trap shooting range on school property is not ripe for determination. *See* ***Olson v. Town of Cottage Grove***, 2008 WI 51, ¶29, 309 Wis. 2d 365, 749 N.W.2d 211. Accordingly, we affirm.

BACKGROUND

¶3 Krivickas owns and resides on property in Oneida County. The northern border of the Krivickas property abuts County Highway A in the Town of Sugar Camp. In 2018, the District purchased 40 acres of undeveloped property in Sugar Camp, the southern border of which abuts County Highway A. Since its purchase, the District has used the undeveloped property as a "school forest," as

that term is understood in the Wisconsin Statutes. *See* WIS. STAT. §§ 26.39(1)(a), 28.20 (2023-24).[1]

¶4 At some point prior to its purchase of the undeveloped property, Three Lakes began discussing using a portion of the property as a trap shooting range. The District has operated a trap shooting club ("the Club") for its junior high and high school students since 2014. Trap shooting involves participants using shotguns to shoot clay targets. Since its inception, the Club has practiced at a local trap shooting range unaffiliated with the District and off of its property.

¶5 In November 2022, Three Lakes reviewed a site plan for the school forest that included the contemplated trap shooting range. The proposed location of the range is within the school forest, immediately north of County Highway A. Krivickas's amended complaint[2] alleges that this proposed location is directly across the road from the Krivickas property—less than 1000 feet from Krivickas's home. Three Lakes has taken certain actions toward development of the property, including approving a site plan and applying for permits to fill wetlands in the school forest.

¶6 In late 2023, Krivickas commenced this action for a declaratory judgment. The amended complaint asserted that Wisconsin law provides that a school district may only operate a school forest for the purpose of forestry; trap shooting is not included within any definition of forestry; and certain federal and state statutes regarding firearm possession on school grounds prevent Three Lakes

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

[2] After filing the original complaint, Krivickas filed an amended complaint, which added the Board as a party.

from operating a trap shooting range in the school forest. On those bases, Krivickas asserted that Three Lakes lacked authority to construct or operate a trap shooting range in its school forest. The amended complaint further asserted that Krivickas was concerned about the potential impacts of the range on the Krivickas property, including potential noise disturbances and safety risks due to errant shots. Krivickas requested a judgment declaring that Three Lakes' construction and operation of a trap shooting range in a school forest was unlawful and prohibiting Three Lakes from constructing and operating the range now or in the future.

¶7 In response to Krivickas's amended complaint, Three Lakes filed a motion to dismiss. Three Lakes asserted that it had abandoned any plans to construct or operate a trap shooting range in the school forest or any other school property and, as a result, the issue was moot. Prior to the hearing on Three Lakes' motion, Krivickas filed a motion for judgment on the pleadings, arguing that there were no material facts in dispute and that Krivickas was entitled to the requested declaratory judgment as a matter of law. The circuit court denied Three Lakes' motion, finding that the question of whether a school district could lawfully construct a trap shooting range in a school forest was "a very straightforward and strictly legal question" that should be resolved by the court in order to avoid uncertainty. At a later hearing, the court heard oral arguments on Krivickas's motion for judgment on the pleadings, but it requested supplemental briefing on certain issues, and converted the motion to a motion for summary judgment.

¶8 Ruling on the motion for summary judgment, the circuit court found that there were no genuine issues of material fact. As recited by the court, the undisputed facts were as follows: (1) Three Lakes owned undeveloped land, which was a school forest; (2) Three Lakes had supported a trap shooting team since

2014; (3) Three Lakes began to plan for a trap shooting range in the school forest in 2018; and (4) at the time of the motion, Three Lakes had no current plans to build the range, but it would not say whether it would build such a range in the future.

¶9 The circuit court interpreted the relevant law as providing Three Lakes the statutory authority, under WIS. STAT. § 120.13, to build and operate a trap shooting range in its school forest. The court also declined to address whether certain state and federal laws regarding firearm possession on school grounds could be harmonized with Three Lakes' authority to build the range. The court denied Krivickas's request for a declaratory judgment and granted summary judgment to Three Lakes, dismissing the declaratory judgment action. *See* WIS. STAT. § 802.08(6) ("If it shall appear to the court that the party against whom a motion for summary judgment is asserted is entitled to a summary judgment, the summary judgment may be awarded to such party even though the party has not moved therefor."). Krivickas now appeals.

DISCUSSION

¶10 On appeal, Krivickas makes two arguments. First, Krivickas claims that state law clearly prohibits the use of a school forest for trap shooting. As a result, Krivickas argues, it would be unlawful for a school board to construct or operate a trap shooting range in a school forest, and Three Lakes should be prohibited, as a matter of law, from doing so. Second, Krivickas asserts that state and federal laws require a school board to suspend, and initiate expulsion proceedings for, pupils in possession of firearms on school property. Therefore, Krivickas argues, operating a trap shooting range on school property would create a school program that Three Lakes knows would result in a student's mandatory

suspension and likely expulsion. Krivickas claims that the suspension and expulsion of students would be a violation of Three Lakes' duty to "do all things reasonable to promote the cause of education." *See* WIS. STAT. § 120.13.

I. Mootness

¶11 As noted above, the circuit court determined that, even though Three Lakes currently asserts it has no plan to build a trap shooting range in its school forest, the question of whether a school board has the authority to do so is a straightforward legal question, which should be resolved in order to avoid uncertainty. "An issue is moot when its resolution will have no practical effect on the underlying controversy." ***County of Dane v. PSC***, 2022 WI 61, ¶24, 403 Wis. 2d 306, 976 N.W.2d 790 (citation omitted). An exception to mootness allows review, however, when the issue is "likely to arise again and should be resolved by the court to avoid uncertainty." ***Id.*** (citation omitted).

¶12 The circuit court determined that while the current Three Lakes school board was not pursuing construction of the trap shooting range, there was no dispute that future Three Lakes school boards might want to do so and, therefore, the issue was "likely to arise again and should be resolved by the Court to avoid uncertainty." Neither party challenges that determination on appeal, and we agree the issue of whether a school board has the authority to construct and operate a trap shooting range (on school property and/or in a school forest) is one that is likely to arise again for Three Lakes and should be resolved in order to avoid uncertainty. Therefore, we will review the court's determination on the legal question of whether a school board has that authority.

II. Three Lakes' Authority to Construct and Operate a Trap Shooting Range

¶13 A circuit court's decision granting summary judgment is subject to de novo review. ***Olson***, 309 Wis. 2d 365, ¶34. "A decision to grant or deny declaratory relief falls within the discretion of the circuit court." ***Id.***, ¶35 (emphasis omitted; citation omitted). However, interpretation of a statute presents a question of law, which we also review de novo. ***Smith v. General Cas. Ins.***, 2000 WI 127, ¶7, 239 Wis. 2d 646, 619 N.W.2d 882. Therefore, when the court's decision to deny or grant declaratory relief "turns upon a question of law," we review the question independently of the circuit court's determination, "benefiting from the [circuit] court's analysis." ***Bellile v. American Fam. Mut. Ins.***, 2004 WI App 72, ¶6, 272 Wis. 2d 324, 679 N.W.2d 827.

¶14 A school district "may acquire land, engage in forestry and appropriate funds for" the purpose of a school forest. WIS. STAT. §§ 26.39(1)(a), 28.20. The Wisconsin Department of Natural Resources ("DNR") is responsible for developing a forestry education curriculum and "provid[ing] funding to school districts that have school forests for the purpose of maintaining the school forests and for transporting pupils to and from the school forests." Sec. 26.39(2), (5). The specific term "forestry" is not defined in either WIS. STAT. ch. 26 or WIS. STAT. ch. 28.

¶15 The powers of a school board are found in WIS. STAT. § 120.13, which states: "[t]he school board of a … school district may do all things reasonable to promote the cause of education, including establishing, providing and improving school district programs, functions and activities for the benefit of pupils." We have interpreted this introductory language as evidence of "the legislature's intent to give school boards broader powers and wide discretion in

exercising those powers." ***Madison Metro. Sch. Dist. v. Burmaster***, 2006 WI App 17, ¶18, 288 Wis. 2d 771, 709 N.W.2d 73 (2005). "The statutory duties and powers of school boards shall be broadly construed to authorize any school board action that is within the comprehensive meaning of the terms of the duties and powers, if the action is not prohibited by the laws of the federal government or of this state." WIS. STAT. § 118.001; *see* ***Klosterman v. School Dist. of Omro***, 2022 WI App 54, ¶¶24-25, 404 Wis. 2d 688, 981 N.W.2d 424.

¶16 A number of distinct school board powers are enumerated in WIS. STAT. § 120.13. *See* § 120.13(1)-(38). Included in these distinct powers is one referencing school forests, which provides that a school board may "[a]llow hunting in its school forest, as defined in [WIS. STAT. §] 26.39(1)(a), except that the board may not allow hunting for a wild animal when there is not an open season for that animal on land adjacent to the school forest." Sec. 120.13(38).

¶17 Krivickas argues that, when reading the statutes regarding school forests together, Three Lakes is limited to one intended use of a school forest, namely "to provide forestry education." Given that "forestry" is not specifically defined in the relevant chapters, Krivickas looks to other statutory provisions and administrative code rules to determine what "forestry" and "forestry education" entail. Specifically, Krivickas points to sections of WIS. STAT. ch. 28 that provide requirements regarding the DNR's management of state forests and the authority of a county to establish and administer a county forest, *see* WIS. STAT. §§ 28.04, 28.10, 28.11., and an administrative rule that defines "generally accepted forestry management practices," WIS. ADMIN. CODE § NR 1.25(2)(b) (June 2026). Krivickas asserts that the interplay of the statutes and the code make it clear that trap shooting has nothing to do with any aspect of forestry or forestry education. Krivickas claims that if trap shooting is not a component of forestry or forestry

education, then it is not permitted in a school forest. Therefore, Krivickas argues, it is *unlawful* for a school board to permit trap shooting in a school forest. Krivickas argues that allowing a trap shooting range in a school forest *cannot* be one of the broad powers afforded to Three Lakes by WIS. STAT. §§ 118.001 and 120.13 because it is not "reasonable" and is prohibited by law.

¶18 We are not persuaded by Krivickas's arguments, and we agree with Three Lakes that WIS. STAT. § 120.13 is the statute on which our analysis should be based. As codified in both § 120.13 and WIS. STAT. § 118.001—and demonstrated in Wisconsin courts' interpretation and application of those statutes—school board powers are expansive. We must construe those powers "so as to authorize 'any' school board action that is within the 'comprehensive meaning' of the terms of such powers and duties, so long as the action … is not prohibited by state or federal laws." ***Klosterman***, 404 Wis. 2d 688, ¶25 (citations omitted). As noted by the circuit court, the Club is a school-approved program for the benefit of students just like other school programs such as the football team or the drama club. It is certainly *reasonable* for a school board to use school property to provide a facility for the Club to practice its sport.

¶19 We also do not read WIS. STAT. chs. 26 and 28 as limiting a school forest to one exclusive use, forestry education, thereby making any other use of the school forest—such as for trap shooting—unlawful. WISCONSIN STAT. § 28.20 provides that a school district "may acquire land, [and] engage in forestry." The statute's use of "may" is key. "Generally, in construing statutes, 'may' is construed as permissive and 'shall' is construed as mandatory unless a different construction is demanded by the statute in order to carry out the clear intent of the legislature." ***City of Wauwatosa v. Milwaukee County***, 22 Wis. 2d 184, 191, 125 N.W.2d 386 (1963). The need to interpret, and attempt to harmonize, several

different statutes and a rule to determine the intent of the legislature as to the envisioned uses of a school forest reflects that the legislature's intent is not sufficiently clear. Therefore, no different construction of the word "may" in § 28.20, other than permissive, is demanded. School districts that acquire forest property are permitted to engage in forestry, but they are not mandated to do so. None of the laws cited by Krivickas prohibit a school district from operating a trap shooting range in a school forest.

¶20 Likewise, we reject Krivickas's argument that the application of the principle of statutory construction *expressio unius est exclusio alterius* to WIS. STAT. § 120.13(38)—which allows for hunting in a school forest—means that the legislature intended that hunting is the only allowable activity besides forestry or forestry education. *Expressio unius est exclusio alterius* means "the express mention of one matter excludes other similar matters not mentioned. '[T]he enumeration of specific alternatives in a statute is evidence of legislative intent that any alternative not specifically enumerated is to be excluded.'" ***Perra v. Menomonee Mut. Ins.***, 2000 WI App 215, ¶12, 239 Wis. 2d 26, 619 N.W.2d 123 (alteration in original; citations omitted).

¶21 Krivickas's argument on this point ignores the introductory language of WIS. STAT. § 120.13. That language provides that the enumerated powers in subsections 1 through 38 are both in addition to, and included in, the broader edict that a school board may do "all things reasonable" to promote the cause of education. The legislature did not intend to specifically define and limit a school board's powers to those 38 listed. The 38 distinct powers are not "specific alternatives," *see* ***Perra***, 239 Wis. 2d 26, ¶12, they are merely those powers the legislature chose to enumerate. The legislature's identification of one activity that

may be conducted in school forests does not mean that all other activities are forbidden.

¶22 We have determined that operating a trap shooting range in its school forest is a reasonable action for Three Lakes to take to promote the cause of education and improve a district program for the benefit of Three Lakes students, and that trap shooting in a school forest is *not* prohibited by state law. Therefore, the authority to construct and operate a trap shooting range is one of the broad and expansive powers afforded to Three Lakes by WIS. STAT. §§ 118.001 and 120.13.

III. State and Federal Laws Regarding Expulsion and Suspension

¶23 We now turn to Krivickas's argument that any interpretation which allows Three Lakes to operate a trap shooting range on school property conflicts with Three Lakes' duty to suspend and expel students in possession of firearms on school property. As a threshold question, we must determine whether this particular issue is a "justiciable controversy" over which we may exercise jurisdiction. *See* ***Olson***, 309 Wis. 2d 365, ¶28.

¶24 The federal Gun-Free Schools Act requires that each state must require school districts "to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school." 20 U.S.C. § 7961(b)(1). However, the Act allows a school district "to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing." ***Id.*** The Act also provides an exception stating: "[n]othing in this section shall apply to a firearm that is … for activities approved and authorized by the [school district] and the [school district] adopts appropriate safeguards to ensure student safety." 20 U.S.C. § 7961(g).

¶25 Wisconsin codified provisions from the Act as one of the school board powers the legislature listed in WIS. STAT. § 120.13.

> The school board shall commence proceedings under [§ 120.13(1)(c)]3. and expel a pupil from school for not less than one year whenever it finds that the pupil, while at school or while under the supervision of a school authority, possessed a firearm, as defined in 18 [U.S.C. § 921(a)(3)]…. This subdivision does not apply to the possession of a firearm while legally hunting in a school forest if allowed under [§ 120.13](38).

Sec. 120.13(1)(c)2m. There is a similar power as to suspensions, which provides that a school district

> shall suspend a pupil … if the school district … determines that the pupil, while at school or while under the supervision of a school authority, possessed a firearm, as defined in 18 [U.S.C. § 921(a)(3)]. This paragraph does not apply to the possession of a firearm while legally hunting in a school forest if allowed under [§ 120.13](38).

Sec. 120.13(1)(bm).[3]

¶26 "A court must be presented with a justiciable controversy before it may exercise its jurisdiction over a claim for declaratory judgment. This is so because the purpose of the [Uniform Declaratory Judgments] Act is to allow courts to anticipate and resolve identifiable, certain disputes between adverse parties." ***Olson***, 309 Wis. 2d 365, ¶28.

> A controversy is justiciable when four conditions are met: (1) "A controversy in which a claim of right is asserted against one who has an interest in contesting it"; (2) "The controversy must be between persons whose

[3] There is also a Wisconsin statute that makes knowing possession of a firearm on school grounds a crime. WIS. STAT. § 948.605. This criminal statute includes the same exception for persons "legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest under [WIS. STAT. §] 120.13(38)." Sec. 948.605(2)(b)3m.

> interests are adverse"; (3) "The party seeking declaratory relief must have a legal interest in the controversy—that is to say, a legally protectable interest"; and (4) "The issue involved in the controversy must be ripe for judicial determination."

Fabick v. Evers, 2021 WI 28, ¶9, 396 Wis. 2d 231, 956 N.W.2d 856 (citation omitted). The parties dispute whether Krivickas's specific claim meets the fourth condition—namely, if the controversy is ripe for judicial determination. While there may be questions as to whether at least one of the other conditions is met, we need only address whether this controversy is ripe because it is dispositive of the justiciability issue.[4] *See* ***State v. Castillo***, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997) ("An appellate court should decide cases on the narrowest possible grounds.").

¶27 "If the resolution of a claim depends on hypothetical or future facts, the claim is not ripe for adjudication and will not be addressed." ***State v. Armstead***, 220 Wis. 2d 626, 631, 583 N.W.2d 444 (Ct. App. 1998). It is not necessary that *all* dispositive facts must be resolved, but "[t]he facts on which the court is asked to make a judgment should not be contingent or uncertain." ***Olson***, 309 Wis. 2d 365, ¶43. The facts must "be sufficiently developed to avoid courts entangling themselves in abstract disagreements." ***Id.*** (citation omitted). Determining whether a matter is ripe is a threshold jurisdictional question that we review de novo. ***Id.***, ¶¶32, 37.

[4] It is unclear from the record whether the third condition—the legal interest requirement—was met. That condition "has often been expressed in terms of standing." ***Village of Slinger v. City of Hartford***, 2002 WI App 187, ¶9, 256 Wis. 2d 859, 650 N.W.2d 81. In order to have standing, a party must have a personal stake in the outcome and be directly affected by the issues in controversy. ***Id.*** How a school board is required to address a student's possession of a firearm on school grounds to trap shoot is between the school board and its students. It does not appear that Krivickas has a personal stake in, or would be directly affected by, Three Lakes' determinations as to these students.

¶28 The resolution of whether state law granting school boards the authority to operate a trap shooting range on school property can be harmonized with federal and state laws regarding firearm possession and state law on expulsions and suspensions involves only hypothetical and future facts. Krivickas's argument is based on a future hypothetical where suspensions *may* be issued to, or expulsion hearings *may* be held for, future students who *may* participate in trap shooting on a range which *might* be located on school property under circumstances where there are no written case-by-case permissions granted to do so. Any facts about these future events are all contingent and uncertain. The question of whether these laws can be harmonized is the kind of abstract disagreement that the ***Olson*** court cautioned against (as opposed to the "straightforward" legal question of whether a school board has the authority to build a range).

¶29 Krivickas's argument on this issue also ignores a number of exceptions that render the possibility of suspensions or expulsion hearings hypothetical in and of themselves, such as the federal exception allowing for firearm use for activities approved and authorized by the school board. As the circuit court summarized in its oral ruling:

> [T]he fluctuation of what a school board may approve this year could be different than what happens in the future, and … there's a lot of what-ifs in this and what happens in the future, and I don't know. I'm not here to decide any of that today. I don't think it's ripe.

We agree. The resolution of any claim that the relevant federal and state laws cannot be harmonized depends only on future facts. Accordingly, the claim is not ripe for adjudication. Because Krivickas failed to meet all of the requisite four conditions, this particular controversy is not justiciable.

CONCLUSION

¶30 In summary, we conclude that the authority to construct and operate a trap shooting range in a school forest is one of the broad and expansive powers afforded to school boards by WIS. STAT. §§ 118.001 and 120.13. However, we decline to address any argument regarding whether that authority can be harmonized with federal and state laws regarding student possession of firearms on school property, as that issue is not ripe for adjudication and, therefore, not justiciable. Accordingly, we affirm the circuit court's order granting summary judgment to Three Lakes and dismissing Krivickas's request for a declaratory judgment.

By the Court.—Order affirmed.

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