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DISTRICT III

November 25, 2025

To:

Hon. Jay N. Conley
Circuit Court Judge
Electronic Notice

Trisha LeFebvre
Clerk of Circuit Court
Oconto County Courthouse
Electronic Notice

Beth L. Ellingson
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Ronald S. Stadler
Electronic Notice

Gregory A. Thompson
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2023AP2250

Gregory A. Thompson v. Todd Skarban
(L. C. No. 2023CV140)

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

Summary disposition orders 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).

Gregory A. Thompson appeals the circuit court's order dismissing his petition for a writ of mandamus. Thompson sought an order compelling Oconto County Sheriff Todd Skarban to enforce a circuit court order resolving a riparian-rights dispute and compelling Skarban to enforce trespass laws. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21

(2023-24).¹ We conclude that Thompson has not shown that he is entitled to a writ of mandamus, and therefore we affirm.

On April 18, 2011, the circuit court entered an order resolving a riparian-rights dispute over an accreted beach/berm area on Wheeler Lake. The order declared that the area was “open and available for use” to six named riparian owners and “not open and not available for use by the general public.” Thompson later acquired two of the relevant parcels. Thompson asserts that on July 1, 2023, his neighbors Jill and Michael Herberg, who were not among the six owners, entered the area, refused to leave, and asserted that they were on land owned by the Department of Natural Resources. Thompson called the Oconto County Sheriff’s Office, complaining that his neighbors were committing trespass. Deputy Steven Kessler responded, but he determined that the dispute was civil in nature and took no further law enforcement action.

Thompson petitioned for a writ of mandamus, arguing that Skarban had a positive and plain duty to enforce the April 18, 2011 circuit court order and the county trespass ordinance against the Herbergs. Skarban moved to dismiss the petition. After a hearing, the court dismissed the petition with prejudice, concluding that Thompson had failed to establish the legal standards required for the issuance of a writ of mandamus. Thompson then filed this appeal.

“Mandamus is an extraordinary legal remedy.” *Lake Bluff Hous. Partners v. City of S. Milwaukee*, 197 Wis. 2d 157, 170, 540 N.W.2d 189 (1995). “A writ of mandamus is a discretionary writ that is issued to compel the performance of a particular act by a lower court or

¹ All references to the Wisconsin statutes are to the 2023-24 version.

governmental officer or body.” *Klein v. DOR*, 2020 WI App 56, ¶36, 394 Wis. 2d 66, 949 N.W.2d 608.

A writ of mandamus will issue only if the petitioner establishes the following four criteria: (1) that they have a clear, specific legal right, which is free from substantial doubt, to the action sought; (2) that the duty sought to be enforced is positive and plain; (3) that substantial damage will result if the duty is not performed; and (4) that there is no other adequate remedy at law. *State ex rel. Zignego v. WEC*, 2021 WI 32, ¶38, 396 Wis. 2d 391, 957 N.W.2d 208. “We will uphold a circuit court’s grant or denial of a writ of mandamus unless the circuit court erroneously exercised its discretion.” *State ex rel. Coogan v. Mishek*, 2020 WI App 37, ¶14, 392 Wis. 2d 885, 945 N.W.2d 752 (citation omitted). “A circuit court’s ‘discretion in issuing a writ of mandamus is erroneously exercised if [it is] based on an erroneous understanding of the law.’” *Id.* (citation omitted).

Turning to the first criterion, Thompson must show that he has a clear, specific legal right to the action he seeks, which is to have Skarban enforce a prior court order to which Thompson was not a party and/or to prosecute the Herbergs for trespassing. *See State ex rel. Collins v. American Fam. Mut. Ins. Co.*, 153 Wis. 2d 477, 483, 451 N.W.2d 429 (1990). According to the petition and attached exhibits, the Herbergs stated that they had a deed permitting them to use the beach area. Oconto County Zoning Office records were inconclusive as to whether the Herbergs had a right to walk on the trail at issue to the beach area. The Oconto County corporation counsel stated that there may be a prescriptive easement on the pathway leading to the beach. Thompson’s petition does not show that he has an exclusive right to the area, nor does it show that the Herbergs had no right to use the area. Thompson is not entitled to mandamus relief because he has not shown that he has a clear legal right to the action he seeks.

As to the second criterion, mandamus will not lie unless the petition is seeking to enforce a plain and positive duty. *Galuska v. Kornwolf*, 142 Wis. 2d 733, 738, 419 N.W.2d 307 (Ct. App. 1987). The duty “must be clear and unequivocal, not discretionary.” *Id.* Although sheriffs have a constitutional duty to maintain law and order and preserve the peace, *Milwaukee Deputy Sheriffs’ Ass’n v. Milwaukee County*, 2016 WI App 56, ¶9, 370 Wis. 2d 644, 883 N.W.2d 154, the performance of those duties is committed to each sheriff’s discretion, *see Klein*, 394 Wis. 2d 66, ¶41. “[I]n the area of criminal and civil investigative and enforcement activities, government actors invariably employ discretion so as to make those activities not amenable to mandamus relief absent a statute compelling a specific action under a specific set of facts.” *Id.* Because Skarban exercised his discretionary authority in determining the dispute here to be civil in nature, Thompson has not shown that Skarban had a positive and plain legal duty.

Thompson argues that Skarban had a positive and plain duty under *Coogan*. Thompson’s reliance on *Coogan* is misplaced. In that case, we held that a sheriff did not have discretion to disregard an order granting Huber release privileges to an inmate because the legislature defined the limited instances when a sheriff can or cannot grant Huber privileges in WIS. STAT. § 303.08. *Coogan*, 392 Wis. 2d 885, ¶2. We therefore concluded that the sheriff had a positive and plain duty to grant Huber release to the defendant. *Id.* Here, however, there is no equivalent statute.

As to the third criterion, Thompson must show that the alleged temporary trespass will cause him substantial damages if Skarban is not ordered to enforce the court order and/or enforce trespass laws against the Herbergs. Thompson has alleged that the Herbergs have used the disputed area to walk their dogs and have pulled out their chairs to sit for a while. A trespasser who has not damaged the property is generally liable only for nominal damages, as opposed to substantial damages. *See Munger v. Seehafer*, 2016 WI App 89, ¶24, 372 Wis. 2d 749, 890

N.W.2d 22. Thompson is not entitled to mandamus relief because he has not shown that he will suffer substantial damages if relief is not granted.

As to the fourth criterion, Thompson has not shown that he has no other adequate legal remedies. Thompson could ask the circuit court for a declaratory judgment. *See Local 1111 of United Elec., Radio & Mach. Workers v. Allen-Bradley Co.*, 255 Wis. 613, 617, 39 N.W.2d 740 (1949) (stating that the ability to ask a court for declaratory judgment constitutes an adequate remedy at law). Thompson could also bring an action for contempt or to enforce the terms of a court order. The availability of these remedies provides an adequate remedy at law and precludes mandamus relief.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals