



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT IV

February 6, 2025

To:

Hon. Vicki L. Clussman
Circuit Court Judge
Electronic Notice

Yvette Kienert
Clerk of Circuit Court
Waupaca County Courthouse
Electronic Notice

John D. Flynn
Electronic Notice

William Grau
Electronic Notice

Bradley J. Priebe
Electronic Notice

R. Rick Resch
Electronic Notice

Rebecca Cleveland Castonia
Thompson, Bissett & Castonia LLP
600 S. Main St., Suite 202
Oshkosh, WI 54902

Tim Gruenke
District Attorney
333 Vine St., Rm. 1100
La Crosse, WI 54601

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

2024AP565-CR

State of Wisconsin v. Pierson T. Leske (L.C. # 2022CF342)

Before Blanchard, Graham, and Nashold, 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).

Pierson Leske, the defendant in this criminal case, appeals a circuit court order appointing a special prosecutor. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT.

RULE 809.21(1) (2021-22).¹ We reverse and remand for further proceedings consistent with this opinion.

Leske was charged by the district attorney with second-degree sexual assault of B.C.² The parties entered into a plea agreement, appeared at a plea hearing, and presented the agreement to the circuit court. B.C. was also present at the hearing.

During the hearing, the State advised the circuit court that B.C. had not expressed any dissatisfaction with the plea agreement. The court also questioned B.C. directly regarding the agreement. B.C. confirmed that she had the opportunity to speak with the district attorney's office regarding the case and that she was aware of the plea agreement. She also said that she did not think she fully understood the agreement. Upon receiving clarification regarding the agreement's terms, she asked the court not to accept it. The court informed the parties and B.C. that the court had concerns with the agreement, and a short time later the court indicated that it would not accept the agreement unless B.C.'s position changed.

After the hearing, B.C., represented by counsel, sent a letter to the circuit court.³ The letter included assertions relating to the district attorney's handling of the case. The letter also indicated that B.C. continued to object to terms of the plea agreement. Finally, the letter stated that B.C. requested the appointment of a special prosecutor under WIS. STAT. § 978.045.

¹ All references to the Wisconsin Statutes are to the 2021-22 version.

² We refer to "B.C." using initials that do not correspond to her real name, to protect her privacy. *See* WIS. STAT. RULE 809.86.

³ The record reflects that B.C. already had counsel at the time of the plea hearing but appeared without counsel at that hearing.

The circuit court issued a letter that addressed some of the assertions in B.C.’s letter. The court also entered an order appointing a special prosecutor under WIS. STAT. § 978.045. Leske appeals that order.⁴

There are limited circumstances for the appointment of a special prosecutor under WIS. STAT. § 978.045. Subsection (1r)(bm) of the statute specifies that the court may appoint a special prosecutor “only if” the court or the district attorney submits an affidavit to the department of administration attesting that one of the following nine criteria exists:

1. There is no district attorney for the county.
2. The district attorney is absent from the county.
- 2m. The district attorney, or a deputy or assistant district attorney for the district attorney office, is on parental leave.
3. The district attorney has acted as the attorney for a party accused in relation to the matter of which the accused stands charged and for which the accused is to be tried.
4. The district attorney is near of kin to the party to be tried on a criminal charge.
5. The district attorney is unable to attend to his or her duties due to a health issue or has a mental incapacity that impairs his or her ability to substantially perform his or her duties.
6. The district attorney is serving in the U.S. armed forces.
7. The district attorney stands charged with a crime and the governor has not acted under [WIS. STAT. §] 17.11.
8. The district attorney determines that a conflict of interest exists regarding the district attorney or the district attorney staff.

Sec. 978.045(1r)(bm).

⁴ This court granted Leske’s petition for leave to appeal the circuit court’s order. *See* WIS. STAT. RULE 809.50.

Here, Leske and the State agree that the circuit court’s appointment of a special prosecutor does not satisfy any of the criteria in WIS. STAT. § 978.045. They also agree that the court’s order appointing a special prosecutor should be reversed on this ground. Additionally, they argue that the court’s order violates separation of powers principles.⁵

We agree with the parties that the circuit court’s order appointing a special prosecutor does not satisfy any of the criteria in WIS. STAT. § 978.045, and we reverse the order on that basis. The record before us does not show that the court made any express or implied finding that could satisfy any of the criteria for appointing a special prosecutor under the statute.⁶ We remand for further proceedings consistent with this opinion. We do not reach the separation of powers question. See *Barrows v. American Fam. Ins. Co.*, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (2013) (“An appellate court need not address every issue raised by the parties when one issue is dispositive.”); *State v. Halmo*, 125 Wis. 2d 369, 374 n.5, 371 N.W.2d 424 (Ct. App. 1985) (“When possible, this court will avoid deciding a constitutional question if the case can be decided on other grounds.”).

Therefore,

⁵ We granted the Wisconsin District Attorneys Association’s request to file a nonparty brief, and the Association takes the same position as the parties. We provided B.C. with the opportunity to file a nonparty brief, and B.C. has not filed a brief.

⁶ After the circuit court issued its order appointing a special prosecutor, the court issued an additional order relating to the appointment of a special prosecutor. We agree with the parties that this additional order is most reasonably viewed as explaining the court’s reasons for its original order, and not as a new or second order for the appointment of a special prosecutor. We also agree with the parties that the additional order does not demonstrate that the court’s appointment of a special prosecutor satisfies any of the criteria in WIS. STAT. § 978.045.

IT IS ORDERED that the circuit court's order is summarily reversed pursuant to WIS. STAT. RULE 809.21(1) and that the cause is remanded for further proceedings consistent with this opinion.

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

Samuel A. Christensen
Clerk of Court of Appeals