

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 22, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-0509

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**ROBERT ABRAHAM, DANIEL ABRAHAM, AND MATTHEW
ABRAHAM,**

PLAINTIFFS-APPELLANTS,

v.

**PATRICK FOX, MARK PIECHOWSKI, AND WAUSHARA
COUNTY,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Waushara County:
RICHARD O. WRIGHT, Judge. *Affirmed.*

Before Vergeront, Deininger and Hue, JJ.¹

¹ Circuit Judge William F. Hue is sitting by special assignment pursuant to the Judicial Exchange Program.

¶1 PER CURIAM. Robert, Daniel, and Matthew Abraham appeal from the trial court’s order dismissing their action against Waushara County, Waushara County Sheriff Patrick Fox and Mark Piechowski, a deputy sheriff. The issue is whether the Abrahams presented any evidence that would give rise to an inference that Piechowski acted maliciously, willfully, or intentionally, thereby forfeiting his immunity from suit as a public officer when he confronted them about a citizen complaint while they were hunting. We conclude that they did not, and we affirm the trial court’s order dismissing the case.

¶2 Summary judgment should be granted where there are no issues of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08 (1999-2000).² We review a trial court’s decision granting summary judgment de novo. *Barillari v. City of Milwaukee*, 194 Wis. 2d 247, 256, 533 N.W.2d 759 (1995).

¶3 “The general rule is that a public officer is immune from personal liability for injuries resulting from acts performed within the scope of the individual’s public office.” *Sheridan v. City of Janesville*, 164 Wis. 2d 420, 425, 474 N.W.2d 799 (Ct. App. 1991). There are several exceptions to this general rule. *Id.* A public officer is not immune for conduct that is malicious, willful and intentional. *Id.* A public officer is also not immune from suit for damages resulting from the negligent performance of a purely ministerial duty. *Id.* A duty is ministerial when “it is absolute, certain and imperative ... [and] nothing remains for judgment or discretion.” *Id.* (quoting *Lister v. Board of Regents*, 72 Wis. 2d 282, 301, 240 N.W.2d 610 (1976)).

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶4 The Abrahams contend Piechowski is not immune from their suit alleging damages based on his interaction with them because his conduct was malicious, willful and intentional. During the hearing on the summary judgment motion, the trial court directly asked the Abrahams whether they had *any* evidence that Piechowski's acts were malicious, willful and intentional. The Abrahams responded they did not. Our review of the record discloses there are no alleged evidentiary facts in the affidavits or other documents in the record that give rise to an inference of malicious, willful and intentional misconduct. Piechowski's interaction with the Abrahams while investigating the citizen complaint also clearly involved discretionary action, thus not evoking the exception for ministerial duties. *See id.* at 427-28. The general rule of immunity therefore applies, entitling Piechowski to judgment as a matter of law.

¶5 The Abrahams also contend Sheriff Patrick Fox and Waushara County were negligent in their training and supervision of Piechowski. In *Sheridan*, we held that a city's training and supervision of its police officers involves the exercise of governmental discretion and, as such, the city was immune from suit. *Id.* at 430. Applying the same rationale here, we conclude Fox and Waushara County are immune from suit for their role in training and supervising Piechowski.³

³ The Abrahams contend there are disputed factual issues pertaining to their false imprisonment claim. These disputed facts are not material to a resolution of this appeal because immunity is a threshold issue. Because immunity attaches, the defendants were entitled to judgment as a matter of law.

By the Court.—Order affirmed.

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

