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DISTRICT II

January 18, 2023

To:

Hon. Chad G. Kerkman
Circuit Court Judge
Electronic Notice

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Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
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Bryan A. Charbogian
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Christopher M. Meuler
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You are hereby notified that the Court has entered the following opinion and order:

2022AP474

Michael M. Bell v. City of Kenosha (L.C. #2021CV868)

Before Neubauer, Grogan and Lazar, 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).

Michael M. Bell appeals an order dismissing his complaint for failure to state a claim upon which relief can be granted. Bell argues he properly pled a claim for declaratory relief and asks this court to reverse and remand for further proceedings. 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 (2019-20).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In 2004, Bell’s son was shot and killed by a City of Kenosha police officer outside of Bell’s residence. In 2019, Bell discovered a dent in the aluminum trim around the garage door near where the shooting occurred. Bell sought access to the bullet from the 2004 shooting so that he could hire an expert to determine whether the dent in the trim was related to the 2004 shooting. The City of Kenosha and Kenosha Joint Services (collectively, the City) refused Bell’s request. Bell, in turn, filed a complaint whereby he sought declaratory and mandamus relief for access to the 2004 bullet for testing. The City moved to dismiss Bell’s complaint on the basis that it failed to establish he was entitled to relief. The circuit court agreed and dismissed the complaint. Bell appeals, challenging only the dismissal of his claim for declaratory relief.

“A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint.” *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶19, 356 Wis. 2d 665, 849 N.W.2d 693 (citation omitted). In order to survive a motion to dismiss, “a complaint must plead facts, which if true, would entitle the plaintiff to relief.” *Id.*, ¶21 (citing WIS. STAT. § 802.02(1)(a)). We independently review a circuit court’s decision on a motion to dismiss. *Id.*, ¶17.

On appeal, Bell argues the circuit court erred by dismissing his complaint because he sufficiently pled a claim for declaratory relief. As a threshold matter, “[a] court must be presented with a justiciable controversy before it may exercise its jurisdiction over a claim for declaratory judgment.” *Olson v. Town of Cottage Grove*, 2008 WI 51, ¶28, 309 Wis. 2d 365, 749 N.W.2d 211. 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 interests are adverse.
- (3) The party seeking declaratory relief must have a legal interest in the

controversy—that is to say, a legally protectible interest. (4) The issue involved in the controversy must be ripe for judicial determination.

Id., ¶29.

“The third requirement is often expressed in terms of standing.” *Chenequa Land Conservancy, Inc. v. Village of Hartland*, 2004 WI App 144, ¶12, 275 Wis. 2d 533, 685 N.W.2d 573. To have standing, a party must “have suffered or be threatened with an injury to an interest that is legally protectible, meaning that the interest is arguably within the zone of interests” that a statute or constitutional provision, under which the claim is brought, seeks to protect. *Id.*, ¶16.

Here, the “legally protectible interest” requirement is dispositive. Bell’s complaint contains no legal basis upon which he should be granted access to the bullet. His complaint simply includes policy and personal reasons as to why he should be permitted access. These allegations are simply not enough to establish a legally protectible interest. The circuit court properly dismissed this cause of action. *See Data Key Partners*, 356 Wis. 2d 665, ¶21.

IT IS ORDERED that the order of the circuit court is affirmed. *See* WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals