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DISTRICT IV

December 29, 2023

To:

Hon. Stephen E. Ehlke
Circuit Court Judge
Electronic Notice

Timothy A. Provis
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Sheila M. Sullivan
Electronic Notice

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

2022AP2104

Tiffany M. Burke v. Calvin Barrett (L.C. # 2022CV1409)

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).

Tiffany Burke appeals a circuit court order denying her petition for a writ of mandamus against Calvin Barrett, the Dane County sheriff. Burke argues that state constitutional provisions addressing victim rights as amended in 2020 (hereinafter the “victim rights provisions”) required the sheriff to investigate her written complaints of alleged crimes. 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 affirm.

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

In her petition for a writ of mandamus, Burke stated that she submitted written complaints to the sheriff alleging that her former landlord and a moving company engaged in theft of her personal property. She argued that the victim rights provisions required the sheriff to investigate her complaints. The circuit court concluded that the sheriff could not be compelled to investigate Burke's complaints by writ of mandamus because his duty to investigate is discretionary. The court therefore denied Burke's petition.

“A writ of mandamus is a discretionary writ that is issued to compel the performance of a particular act by a lower court or 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 upon showing the following prerequisites: (1) a clear legal right; (2) a positive and plain duty; (3) substantial damages; and (4) the absence of any other adequate remedy at law.” *Id.* “Additionally, the duty to act on the part of the government official must be ‘clear and unequivocal’; a circuit court erroneously exercises its discretion by issuing such a writ when the duty to be performed requires the exercise of discretion.” *Id.* (quoted source omitted).

We will uphold the circuit court's grant or denial of a petition for a writ of mandamus unless the court erroneously exercised its discretion. *Lake Bluff Hous. Partners v. City of S. Milwaukee*, 197 Wis. 2d 157, 170, 540 N.W.2d 189 (1995). The court erroneously exercises its discretion if it denies the writ based on a misapplication of the law. *Id.*

Here, we agree with the circuit court's conclusion that the sheriff cannot be compelled by writ of mandamus to investigate Burke's complaints. Our case law establishes that the sheriff's duty to investigate alleged crimes is generally discretionary and not a positive and plain duty that can be compelled by mandamus. See *Galuska v. Kornwolf*, 142 Wis. 2d 733, 740-41, 419

N.W.2d 307 (Ct. App. 1987) (concluding that the sheriff’s duty to investigate and enforce criminal statutes is a “traditional and general duty” for which mandamus is not available); *see also 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.”).

According to Burke, the victim rights provisions supersede this case law and impose a positive and plain duty on the sheriff to investigate all written complaints of alleged crimes. We are not persuaded. Burke points to no language in the victim rights provisions that can reasonably be interpreted to impose such a duty.

Burke also argues that we must look beyond the express language and consider other sources of the framers’ or the voters’ intent in amending the constitution in 2020 to strengthen victim rights. This argument is likewise not persuasive because Burke does not establish that any of these sources reflect an intent to require sheriffs to investigate all written complaints of alleged crimes.

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals