

STATE OF MICHIGAN
COURT OF APPEALS

SCHOOLCRAFT COUNTY SHERIFF'S
DEPARTMENT,

UNPUBLISHED
June 8, 2010

Plaintiff-Appellant,

v

SCHOOLCRAFT COUNTY BOARD OF
COMMISSIONERS,

No. 294815
Schoolcraft Circuit Court
LC No. 09-004208-AW

Defendant-Appellee.

Before: SAAD, P.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order dismissing its ex parte motion for a temporary restraining order and complaint for mandamus and declaratory and injunctive relief. Because a county board of commissioners is not required to pay an undersheriff a fulltime salary, we affirm.

On September 24, 2009, defendant adopted the 2009-2010 fiscal year budget for Schoolcraft County. The budget provided a salary of \$13,312 for the undersheriff. The salary amounted to compensation for 16 hours of work a week.

Before the 2008-2009 fiscal year, defendant had budgeted the position of undersheriff as a parttime position. However, after Grant Harris was elected sheriff of Schoolcraft County in November 2008, he persuaded defendant to provide a fulltime salary to the undersheriff. He explained that the employment of a fulltime undersheriff would reduce the amount of overtime paid to deputy sheriffs and allow him to concentrate on law enforcement, because the person he desired to appoint as undersheriff, who had substantial experience as a corrections officer, could maintain jail operations and work the second shift at the county jail. Despite Harris's statements, the amount of overtime paid to deputy sheriffs for the 2008-2009 fiscal year increased and the undersheriff did not work any jail shifts. Defendant, thereafter, decided that for the 2009-2010 fiscal year, it was not prudent to pay the undersheriff a fulltime salary.

On September 30, 2009, the day before the 2009-2010 budget went into effect, plaintiff filed an ex parte motion for a temporary restraining order and a complaint for mandamus and declaratory and injunctive relief. In the complaint, plaintiff maintained that defendant's refusal to appropriate a salary commensurate with a fulltime position for the undersheriff was "contrary

to the constitutional mandate of the Office of Sheriff” and violated the sheriff’s common-law and statutory rights to appoint and employ an undersheriff at his pleasure. In support of the claim, plaintiff cited several statutes, MCL 45.405, MCL 45.407, MCL 45.408, MCL 51.71, and MCL 51.72, and *Nat’l Union of Police Officers Local 502-M, AFL-CIO v Wayne Co Bd of Comm’rs*, 93 Mich App 76; 286 NW2d 242 (1979).

On October 1, 2009, without a hearing, the trial court entered an order denying relief to plaintiff. In its order, the trial court stated, “[A] court can only require an officer or board member to exercise [his or her] discretion to enforce a statute or ordinance when a clear legal duty is demonstrated.” It held that defendant did not have a clear legal duty to pay the undersheriff a fulltime salary because MCL 45.405 “does not mandate a ‘full-time undersheriff.’” The trial court further stated that the issue of salaries of county personnel was an issue that rested in the political, not the judicial, arena. The trial court subsequently issued an order dismissing the case with prejudice.

On appeal, plaintiff claims that the trial court’s dismissal of its ex parte motion and complaint was error. According to plaintiff, because a county sheriff is a constitutional position and a sheriff retains all duties and powers that existed at common law, a county board of commissioners cannot proscribe or restrict the sheriff’s duties and powers. Plaintiff asserts that defendant restricted the sheriff’s powers when, after the sheriff determined that it was necessary for the county to have a fulltime undersheriff, it refused to provide a commensurate salary.¹

The issue whether a county sheriff has a constitutional, statutory, or common-law right to employ a fulltime undersheriff, as opposed to a parttime undersheriff, is a question of law. We review questions of law de novo. *Flint Cold Storage v Dep’t of Treasury*, 285 Mich App 483, 492; 776 NW2d 387 (2009).

In his pleading, plaintiff requested a writ of mandamus and declaratory and injunctive relief. A writ of mandamus is an extraordinary remedy, *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2004), as is an injunction, *Higgins Lake Prop Owners Ass’n v Gerrish Twp*, 255 Mich App 83, 106; 662 NW2d 387 (2003). A court should only issue a writ of mandamus where

- (1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act

¹ Defendant claims that plaintiff, listed on the caption as “Schoolcraft County Sheriff’s Department,” has no legal existence apart from Schoolcraft County and, therefore, is not capable of either suing or being sued. We do not decide whether a sheriff’s department is a separate legal entity, because it appears to us, based on statements in the ex parte motion and complaint, that despite the caption the actual plaintiff is Harris, in his official capacity as sheriff of Schoolcraft County. The ex parte motion provides, “Plaintiff, Sheriff Grant Harris, in his official capacity as the duly elected Sheriff . . . respective, by his attorneys . . . states as follows . . .” We also reject defendant’s other “threshold” arguments that plaintiff’s brief on appeal does not substantially comply with MCR 7.212 and that plaintiff is not an aggrieved party.

requested, (3) the act is ministerial and involves no exercise of discretion of judgment, and (4) no other remedy exists, legal or equitable, that might achieve the same result. [*Tuggle v Dep't of State Police*, 269 Mich App 657, 668; 712 NW2d 750 (2005) (quotation omitted).]

An injunction may only be granted when “(1) justice requires it, (2) there is no adequate remedy at law, and (3) there exists a real and imminent danger of irreparable injury.” *Higgins Lake Prop Owners Ass'n*, 255 Mich App at 106; 662 NW2d 387 (2003) (quotation omitted). In a case of actual controversy, a court may declare the rights and other legal relations of an interested party. MCR 2.605(A)(1).

A county sheriff is a constitutional officer, Const 1963, art 7, § 4, whose duties are established by law, MCL 51.68 *et seq.*; *People v Van Tubbergen*, 249 Mich App 354, 361; 642 NW2d 368 (2002). One duty of a county sheriff is to appoint an undersheriff. MCL 51.71 (“The sheriff of each county shall . . . appoint some person under sheriff of the same county . . .”); MCL 45.405 (“The sheriff shall appoint an under-sheriff . . .”). Because the word “shall” in a statute requires mandatory conduct, *Hughes v Almena Twp*, 284 Mich App 50, 62; 771 NW2d 453 (2009), a county sheriff must appoint an undersheriff.

“Boards of supervisors shall have legislative, administrative and such other powers and duties as provided by law.” Const 1963, art 7, § 8.² Plaintiff does not dispute that, as part of its legislative powers, a county board of commissioners has the authority to “fix” the salary of the undersheriff. See MCL 45.401(1) (“The salaries may be fixed and determined by the county board of commissioners at its annual meeting held in October before the commencement of the terms of the officers. The salaries shall be compensation in full for all services performed by the sheriff, under-sheriff, and deputy sheriffs . . .”); *Van Tubbergen*, 249 Mich App at 364.³

A board of commissioners must provide funding for an undersheriff. See *Employees & Judge of the Second Judicial Dist Court v Hillsdale Co*, 423 Mich 705, 721; 378 NW2d 744 (1985) (“Where the Legislature has by statute granted authority or created a duty, the local funding unit may not refuse to provide adequate funding to fulfill the function.”). And, defendant has provided a salary, albeit a parttime salary, for the undersheriff. There is, however, no requirement in any constitutional provision or statute cited by plaintiff that the county

² A “board of supervisors” is another name for a “board of commissioners.” MCL 46.416.

³ Pursuant to the constitution, 1963 Const, art 7, § 9, a “[b]oard of supervisors shall have exclusive power to fix the compensation of county officers not otherwise provided by law.” Because neither party has presented us with any analysis concerning whether an undersheriff is a county officer, we do not decide the issue.

In a county with a population between 150,000 and 300,000, the undersheriff shall receive a salary of \$2,000 per year, unless the board of commissioners provides for an increase in salary. MCL 51.241. In a county with a population of more than 400,000, the board of commissioners shall fix the salary of the undersheriff. MCL 51.242. Our research reveals that the population of Schoolcraft County is less than 10,000; thus, neither statute applies to the present case.

undersheriff must be paid a fulltime salary. Nor does *Nat'l Union of Police Officers*, 93 Mich App 76, or any case cited by plaintiff in his brief on appeal, provide that a sheriff has a common-law right to employ a fulltime undersheriff. In addition, plaintiff does not claim with any specificity that any function required of him as the county sheriff will be placed in jeopardy if the undersheriff does not receive a fulltime salary. *Employees & Judge of the Second Judicial Dist Court*, 423 Mich at 717-719.⁴ Further, defendant's decision to provide the undersheriff with a parttime salary does not infringe on plaintiff's statutory right to appoint an undersheriff or dictate to plaintiff which duties must or may not be delegated to the undersheriff.

Because plaintiff has not established that a county sheriff has a constitutional, statutory, or common-law right to employ a fulltime undersheriff, we affirm the trial court's order denying plaintiff's ex parte motion and complaint. *Fisher v Blankenship*, 286 Mich App 54, 70; 777 NW2d 469 (2009) (this Court will affirm a decision by the trial court that reached the correct result). Defendant was under no duty to pay the undersheriff a fulltime salary; therefore, plaintiff is not entitled to a writ of mandamus or declaratory relief, and justice does not require an injunction.⁵

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray

⁴ We note that plaintiff does not claim that his predecessor, whose undersheriff received a parttime salary, was unable to perform the functions required of a county sheriff.

⁵ Because plaintiff's claim that a sheriff has a right to a fulltime undersheriff is without merit, we find it unnecessary to address the justiciability of plaintiff's claim against defendant.