

**FILED**

**JUNE 19, 2012**

**In the Office of the Clerk of Court  
WA State Court of Appeals, Division III**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

LAWRENCE CRONIN, VIRGINIA  
CRONIN, RICHARD HANSON,  
MICHAEL WALTERS, and DOUGLAS  
TURNER,

Appellants,

v.

SPOKANE POLICE DEPARTMENT, and  
CITY OF SPOKANE,

Respondents.

No. 30406-0-III

UNPUBLISHED OPINION

Korsmo, C.J. • Appellants seek review of a trial court ruling that dismissed their mandamus action. Because two of the three necessary elements for a writ of mandamus are missing, we affirm.

FACTS

During the summer of 2011, the Spokane Police Department (SPD) received

multiple requests from Appellants to “enforce the homicide laws” against Planned Parenthood, an organization that among its services performs abortions. SPD declined the requests because abortion is lawful in Washington.

Appellants filed a petition for writ of mandamus in Spokane County Superior Court, seeking to compel the City of Spokane and SPD to “enforce the homicide laws.” Respondents successfully moved for dismissal. The trial court held that appellants lacked standing to bring a writ of mandamus and there was no basis under Washington law for the court to grant the writ.

Appellants timely appealed to this court.

#### ANALYSIS

Mandamus is an extraordinary statutory remedy that is not directed at a general course of conduct, but rather at a particular thing to be done. *Walker v. Munro*, 124 Wn.2d 402, 407-08, 879 P.2d 920 (1994). It will not lie to compel a general course of official conduct because a court simply cannot oversee the performance of such duties. *Id.* at 408. However, the inability of mandamus to compel a general course of official action does not mean that it is an insufficient remedy for an ongoing violation of a specific duty. *Id.* Where there is a specific, existing duty that an official has violated, and continues to violate, mandamus is appropriate to compel performance. *Kanekoa v. Dep't of Soc. & Health Serv.*, 95 Wn.2d 445, 449-50, 626 P.2d 6 (1981).

Mandamus is not appropriate to compel the performance of acts or duties

involving a public officer's discretion. *Vangor v. Munro*, 115 Wn.2d 536, 543, 798 P.2d 1151 (1990). Nonetheless, it may be used in order to require an official to exercise that discretion without dictating the course in which that discretion is to take. *Peterson v. Dep't of Ecology*, 92 Wn.2d 306, 314, 596 P.2d 285 (1979).

A successful applicant for a writ of mandamus must satisfy three elements: (1) the subject party must be under a clear duty to act; (2) the applicant cannot have another plain, speedy, and adequate remedy in the ordinary course of law; and (3) the applicant must be "beneficially interested." *Eugster v. City of Spokane*, 118 Wn. App. 383, 402, 76 P.3d 741 (2003); RCW 7.16.160, .170. The Appellants contest the trial court's determination that SPD did not have a clear duty to act and that they are not beneficially interested.<sup>1</sup> Each is discussed below.

#### *Duty to Act*

Duty is ordinarily a threshold element, and mandamus may be appropriate to compel a government official or entity to comply with a law where the claim is clear and there is a duty to act. *Eugster*, 118 Wn. App. at 404. However, that duty must be both mandatory and ministerial. *Freeman v. Gregoire*, 171 Wn.2d 316, 327, 256 P.3d 264 (2011). A duty is ministerial "where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *State v. City of Seattle*, 137 Wash. 455, 461, 242 P. 966 (1926).

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<sup>1</sup> The parties have not raised the issue of whether another adequate remedy at law exists and that issue is not before us.

The question of whether such a duty exists is one this court reviews de novo. *River Park Square, LLC v. Miggins*, 143 Wn.2d 68, 76, 17 P.3d 1178 (2001).

The duty to act element is not established here for two reasons. First, mandamus does not lie to proscribe a specific course of action for SPD, i.e., enforcement of a particular law. *Walker*, 124 Wn.2d at 408. Appellants have not established that SPD has a duty to investigate every alleged offense, let alone enforce a specific one. SPD simply has no duty to act in this case.

The second reason is that the legislature has provided:

The state may not deny or interfere with a woman's right to choose to have an abortion prior to viability of the fetus, or to protect her life or health. A physician may terminate and a health care provider may assist a physician in termination of a pregnancy as permitted by this section.

RCW 9.02.110. It is well settled that law enforcement officers acting in their official capacity are agents of the state. *See State v. Heritage*, 152 Wn.2d 210, 216, 95 P.3d 345 (2004). Since the legislature has expressly provided that the state, including police officers, may not interfere in abortion procedures, the argument that a duty exists to enforce "homicide laws" in abortion cases is incorrect.

#### *Beneficial Interest*

An individual has standing to bring a mandamus action if he or she is beneficially interested. An individual is beneficially interested if he or she has an interest in the action *beyond* that shared in common with other citizens. *Retired Pub. Employees*

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*Council of Wash. v. Charles*, 148 Wn.2d 602, 616, 62 P.3d 470 (2003). Here, appellants argue that they are “beneficially interested” as members of society in common with all others who seek to stop homicides in their community. Their argument essentially admits that they do not have legal standing. Indeed, they also contend that the well-settled “beneficial interest” standard should not be applicable. However, this court is not able to change a standard that has been adopted by the Washington Supreme Court. *State v. Gore*, 101 Wn.2d 481, 487, 681 P.2d 227 (1984).

Appellants have failed to demonstrate any interest in the action beyond that shared in common with all other citizens. They therefore are not “beneficially interested” and lack standing. *Charles*, 148 Wn.2d at 616.

#### CONCLUSION

The trial court did not err in dismissing the mandamus action because SPD is under no clear duty to act and the Appellants lack standing.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the

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Washington Appellate Reports, but it will be filed for public record pursuant to RCW  
2.06.040.

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Korsmo, C.J.

WE CONCUR:

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Sweeney, J.

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Brown, J.