COURT OF APPEALS
DECISION
DATED AND FILED

October 15, 2013

Diane M. Fremgen
Clerk of Court of Appeals

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.

Appeal No. 2013AP269 **Cir. Ct. No. 2011CV2195**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

GREEN BAY PROFESSIONAL POLICE ASSOCIATION, ITSELF AND ON BEHALF OF ITS MEMBERS AND RYAN MEADER,

PLAINTIFFS-RESPONDENTS,

PROFESSIONAL FIREFIGHTERS OF WISCONSIN, INC. AND GREEN BAY PROFESSIONAL FIRE FIGHTERS ASSOC., LOCAL 141, IAAF,

INTERVENORS-PLAINTIFFS,

BROWN COUNTY SHERIFF'S DEPARTMENT NON-SUPERVISORY LABOR ASSOCIATION, ITSELF AND ON BEHALF OF ITS MEMBERS,

INTERVENOR-PLAINTIFF-RESPONDENT,

V.

CITY OF GREEN BAY,

DEFENDANT-CO-APPELLANT,

BROWN COUNTY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County: MARC A. HAMMER, Judge. *Reversed*.

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Brown County and the City of Green Bay (collectively, the Municipalities) appeal an order granting a writ of mandamus to the Green Bay Professional Police Association, Ryan Meader, and the Brown County Sheriff's Department Non-Supervisory Labor Association (collectively, the Associations).[1] The writ directed the Municipalities to comply with the health insurance provisions of their expired collective bargaining agreements with the Associations until new agreements were reached. Specifically, the writ prohibited the Municipalities from "impos[ing] health insurance deductibles, co-pays, prescription costs, etc." against members of the Associations "other than [as] agreed to (and contained in)" the expired agreements. We conclude the circuit court erroneously exercised its discretion by granting the writ because the Associations failed to establish the elements necessary to obtain mandamus relief. We therefore reverse.

BACKGROUND

¶2 On March 16, 2010, the Green Bay Common Council passed a motion approving the 2009-11 collective bargaining agreement between the City and the Police Association. The agreement was executed on June 1, 2010. On August 18, 2010, the Brown County Board of Supervisors passed a resolution

[1] Individually, we refer to the Green Bay Professional Police Association as the Police Association and to the Brown County Sheriff's Department Non-Supervisory Labor Association as the Sheriff's Association.

authorizing the County to execute a 2010-11 collective bargaining agreement with the Sheriff's Association. That agreement was executed on March 17, 2011. Both agreements provided that the Municipalities would make health insurance coverage available to the Associations' members. Each agreement identified specific health care costs for which the Associations' members would be responsible. Both agreements provided they would expire on December 31, 2011.

¶3 On June 26, 2011, the legislature enacted 2011 Wis. Act 32. Section 2409cy of Act 32 created WIS. STAT. § 111.70(4)(mc)6., which provides:

> (mc) *Prohibited subjects of bargaining; public safety employees.* The municipal employer is prohibited from bargaining collectively with a collective bargaining unit containing a public safety employee with respect to any of the following:
>
> ....
>
> 6. The design and selection of health care coverage plans by the municipal employer for public safety employees, and the impact of the design and selection of the health care coverage plans on the wages, hours, and conditions of employment of the public safety employee.[2]

¶4 After WIS. STAT. § 111.70(4)(mc)6. went into effect, the City and the Police Association attempted to negotiate a successor to their 2009-11 collective bargaining agreement. During negotiations, the City asserted that § 111.70(4)(mc)6. allowed it to unilaterally redesign the health insurance plans it provided to public safety employees. The City contended the Police Association

[2] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted. WISCONSIN STAT. § 111.70(4)(mc)6. was amended on June 30, 2013. *See* 2013 Wis. Act 20, § 1722p. The amended version of the statute allows a municipal employer to collectively bargain with public safety employees regarding "the employee premium contribution[.]" *See* ***id.*** The 2013 amendment does not affect this appeal.

was prohibited from bargaining about the financial effect the City's health insurance design choices would have on the Police Association's members. The County took a similar position when negotiating a successor to its 2010-11 collective bargaining agreement with the Sheriff's Association.

¶5 Consequently, on September 26, 2011, the Police Association filed a declaratory judgment action against the City, asking the circuit court to determine whether WIS. STAT. § 111.70(4)(mc)6. "allow[ed] the City to unilaterally determine the 'structure' of its health insurance plan(s), including [a Police Association] member's financial exposure to health care costs[.]" The Sheriff's Association intervened in the lawsuit and joined the County as a defendant.[3] All parties then moved for summary judgment. On December 10, 2012, the circuit court granted summary judgment to the Municipalities. The court concluded that, with the exception of premiums, § 111.70(4)(mc)6. unambiguously prohibited collective bargaining about public safety employees' proportionate share of health care costs.[4]

¶6 Thereafter, the Associations moved for a writ of mandamus. The Associations contended the Municipalities had made it clear they intended to unilaterally implement new health insurance plans on January 1, 2013, that would subject the Associations' members to increased health care costs. The Associations asked the circuit court to order the Municipalities to comply with the

[3] The Green Bay Professional Fire Fighters Association, Local 141, IAFF, AFL-CIO and Professional Fire Fighters of Wisconsin, Inc., also intervened in the lawsuit. However, neither of those organizations joined the Associations' motion for a writ of mandamus and, as a result, they are not parties to this appeal.

[4] The Municipalities conceded that WIS. STAT. § 111.70(4)(mc)6. did not prohibit public safety employees from collectively bargaining over "the premium or premium equivalent."

expired collective bargaining agreements' health insurance provisions until successor agreements were executed. The Associations observed the expired agreements stated they could be altered or amended only by "a subsequent written agreement between and executed by the [municipality] and the Bargaining Unit[.]" The Associations also noted the Municipalities had passed resolutions approving the expired agreements. The Associations argued the Municipalities had a plain and positive legal duty to honor their own resolutions by complying with the expired agreements' health insurance provisions until the parties executed new agreements. The Associations further argued they had a clear legal right to rely on the Municipalities' resolutions approving the expired agreements. The Associations also asserted they would suffer substantial damage if the court did not grant mandamus relief and they had no other adequate remedy at law.

¶7 In an oral ruling on the Associations' motion, the circuit court explained it stood by its previous decision that WIS. STAT. § 111.70(4)(mc)6. prohibited municipalities and their public safety employees from collectively bargaining about the employees' proportionate share of health care costs. However, the court stated the question posed by the Associations' motion was "one of implementation. When is the impact of the decision? When does that go into effect?" The court reasoned:

> [T]he bottom line is this. The [Municipalities] do not have contracts with these unions and will not have contracts with these unions as of December 31, 201[2]. Some arrangements need to be continued in full force and effect until a new agreement is bargained with whatever terms that agreement contains. …
>
> And as such, the status quo, I think, must be maintained. I'm not going to pick which benefits remain and which benefits do not remain if I'm going to enter an order that the status quo remains in full force and effect. And I'm satisfied that [the Municipalities] have the ability to address any prejudice that may result by continuing aggressive

> negotiation or alternative dispute resolution, which is provided for in labor law and which, quite frankly, the court has no impact [on] whatsoever.

The court therefore stated it would "enter an order that [the Municipalities] must maintain the status quo" as "defined under the previous bargaining agreements[.]" The court determined mandamus relief was appropriate, rather than a temporary injunction, because:

> There's no separate action filed. You're asking me really to look back within the context of this case … asking for a date of [implementation], and until that date of implementation is clarified, we want the current benefits. That to me sounds like an action in mandamus and not an action for temporary injunction.

Accordingly, the court entered an order granting the Associations a writ of mandamus. The Municipalities now appeal from that order.

DISCUSSION

¶8 "Mandamus is an extraordinary writ issued in the discretion of the circuit court to compel compliance with a plain legal duty." ***Mount Horeb Cmty. Alert v. Village Bd. of Mt. Horeb***, 2003 WI 100, ¶9, 263 Wis. 2d 544, 665 N.W.2d 229. To obtain a writ of mandamus, a petitioner must show that: (1) he or she has a clear, specific legal right that is free from substantial doubt; (2) the duty sought to be enforced is positive and plain; (3) substantial damage will result if the duty is not performed; and (4) there is no other adequate remedy at law. ***Lake Bluff Housing Partners v. City of S. Milwaukee***, 197 Wis. 2d 157, 170, 540 N.W.2d 189 (1995). We will uphold a circuit court's decision to grant or deny a writ of mandamus unless the court erroneously exercised its discretion. ***Id.*** A court properly exercises its discretion when it examines the relevant facts, applies a proper standard of law, and using a demonstrated rational process, reaches a

conclusion a reasonable judge could reach. ***Loy v. Bunderson***, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982). If the court sets forth inadequate reasons for its decision, we independently review the record to determine whether the facts support the court's decision. ***Miller v. Hanover Ins. Co.***, 2010 WI 75, ¶30, 326 Wis. 2d 640, 785 N.W.2d 493.

¶9 Here, the circuit court failed to apply the proper legal standard to the Associations' motion for mandamus relief. The court did not address any of the four elements a petitioner must prove to obtain a writ of mandamus. The court's decision to grant the Associations a writ of mandamus therefore constitutes an erroneous exercise of discretion.

¶10 Moreover, we conclude as a matter of law that the Associations have failed to establish the third and fourth requirements for mandamus relief.[5] First, the Associations have not shown that substantial damage will result if the Municipalities fail to perform their purported duty to honor their own resolutions by complying with the expired collective bargaining agreements' health insurance provisions. The Associations allege, without further support, that the Municipalities' failure to comply with this duty will damage the Associations in three ways: (1) it will "seriously impair[]" their "right to rely on the Municipalities adhering to their own legislation[;]" (2) it will "severely damage[]" the parties' ability to collectively bargain; and (3) it will have "negative and unintended complications far removed from [the Associations.]"

[5] For purposes of this appeal, we assume, without deciding, that the Associations have met the first two requirements to obtain a writ of mandamus.

¶11 These vague and amorphous allegations of damage are insufficient to support a claim for mandamus relief. The Associations do not provide any evidence of specific damage the Municipalities' actions will cause. They do not allege the Municipalities' actions will cause any financial damage to the Associations' members, let alone substantial financial damage. We need not address inadequately developed arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶12 Second, the Associations have failed to establish that they have no other adequate remedy at law. Citing ***State ex rel. Milwaukee County Personnel Review Board v. Clarke***, 2006 WI App 186, ¶40, 296 Wis. 2d 210, 723 N.W.2d 141, the Associations assert that "[t]here exists no 'adequate' means to require a municipality to comply with its own ordinance other than [m]andamus." However, ***Clarke*** does not stand for the proposition that mandamus relief is the only adequate remedy when a municipality fails to perform its duties. ***Clarke*** merely states that "[a] writ of mandamus *may* be used to compel public officers to perform duties arising out of their office and presently due to be performed." ***Id.*** (emphasis added) (quoting ***Pasko v. City of Milwaukee***, 2002 WI 33, ¶24, 252 Wis. 2d 1, 643 N.W.2d 72).

¶13 As the Municipalities point out, there were several other remedies available to the Associations after the circuit court granted the Municipalities summary judgment. The Associations could have moved for reconsideration of the court's decision. They could have, and did, appeal the court's ruling. They could also have sought a stay of the court's decision pending appeal. The Municipalities argue that any of these approaches, if successful, would have provided the Associations with an adequate remedy. We agree. In addition, the Associations fail to respond to the Municipalities' argument that these other

remedies would have been adequate. We therefore deem the point conceded. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (arguments not refuted are deemed conceded). Because the Associations have failed to establish the necessary elements for mandamus relief, the circuit court erred by granting them a writ of mandamus.[6]

By the Court.—Order reversed.

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

[6] The Municipalities raise several alternative arguments in support of reversal. Because we conclude the Associations have failed to establish the necessary elements for mandamus relief, we need not address these additional arguments. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (court of appeals need not address every issue raised when one is dispositive).