OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

July 2, 2024

To:

Hon. Rhonda L. Lanford
Circuit Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Hannah Schieber Jurss
Electronic Notice

Eric M. McLeod
Electronic Notice

Kristin M. Schrank
Electronic Notice

Alliance for Animals
P.O. Box 1632
Madison, WI 53701

Wayne Hsiung
#104
530 Stockton Street
San Francisco, CA 94108

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

2024AP1074-W State of Wisconsin ex rel. Ridglan Farms Inc. v. Circuit Court of Dane County (L.C. # 2024JD1)

Before Kloppenburg, P.J., Graham, and Nashold, JJ.

Ridglan Farms, Inc., petitions for a supervisory writ against the Dane County Circuit court, the Honorable Rhonda L. Lanford, presiding. Ridglan argues that Judge Lanford, acting in her capacity as a circuit judge in proceedings under WIS. STAT. § 968.02(3) (2021-22),[1] violated a plain duty by refusing to allow Ridglan to participate in the proceedings. The judge has filed a

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

response to the petition. A separate response has been filed by additional respondents Wayne Hsiung, Dane4Dogs, Ltd., and Alliance for Animals. We deny the petition.

WISCONSIN STAT. § 968.02(3) establishes a procedure for a circuit judge to permit the filing of a criminal complaint if a district attorney refuses or is unavailable to issue a complaint. The statute provides as follows:

> If a district attorney refuses or is unavailable to issue a complaint, a circuit judge may permit the filing of a complaint, if the judge finds there is probable cause to believe that the person to be charged has committed an offense after conducting a hearing. If the district attorney has refused to issue a complaint, he or she shall be informed of the hearing and may attend. The hearing shall be ex parte without the right of cross-examination.

Sec. 968.02(3).

Here, Hsiung, Dane4Dogs, Ltd., and Alliance for Animals petitioned the circuit court under WIS. STAT. § 968.02(3) to permit the filing of a criminal complaint against Ridglan, and the circuit judge scheduled a hearing for July 10, 2024. It is undisputed that the judge has refused to consider a brief that Ridglan filed responding to the petition and has also refused to allow Ridglan to participate in the July 10 hearing. Ridglan argues that the judge has a plain duty to allow Ridglan to be heard in the proceedings in some fashion based on its rights as a victim in a separate criminal case in which Hsiung was a defendant. For the reasons that follow, we conclude that Ridglan has not shown that it is entitled to supervisory relief.

The background facts are based on the parties' submissions to this court. Ridglan is an animal research and dog breeding facility. In 2021, the State filed a criminal complaint alleging

that Hsiung and other individuals committed burglary and theft against Ridglan.[2] According to the complaint allegations, Hsiung broke into Ridglan and removed dogs from the facility. He also obtained video and photographic images from inside the facility. A trial on the charges against Hsiung was set to begin in March 2024. Before the scheduled trial date, the prosecutor moved to dismiss the case at Ridglan's request, and the circuit court dismissed the case.[3]

After dismissal of the case, Hsiung and Dane4Dogs petitioned the circuit judge under WIS. STAT. § 968.02(3) to permit the filing of a criminal complaint against Ridglan.[4] They alleged in the petition that Ridglan committed crimes against animals in violation of WIS. STAT. §§ 951.02 and 951.14.[5] They further alleged that the district attorney refused to issue a criminal complaint against Ridglan for its alleged activities. Ridglan filed a brief in opposition to the petition and, as noted above, the judge refused to consider Ridglan's brief and also refused to allow Ridglan to participate in the hearing scheduled for July 10.

Ridglan then filed its petition for a supervisory writ in this court. In the petition, Ridglan requests that we direct the circuit judge to allow Ridglan to be heard in some fashion in the

[2] The other individuals are not parties to the current proceedings.

[3] The parties do not appear to agree on the reason or reasons that Ridglan requested dismissal. According to Ridglan, it requested dismissal because it was receiving death threats, and it preferred dismissal to the ongoing threats and other harm it was sustaining as a result of the prosecution. According to Hsiung, Ridglan requested dismissal "perhaps out of a concern for having a spotlight focused on [Ridglan's] cruel practices."

[4] Alliance for Animals later joined in an amended petition.

[5] WISCONSIN STAT. § 951.02 provides that "[n]o person may treat any animal, whether belonging to the person or another, in a cruel manner." WISCONSIN STAT. § 951.14 provides that "[n]o person owning or responsible for confining or impounding any animal may fail to provide the animal with proper shelter as prescribed in this section."

proceedings under WIS. STAT. § 968.02(3). It argues that its rights as a victim entitle it to be heard. Alternatively, Ridglan requests that we direct the judge to hold the July 10 hearing in a manner that is closed to the public and sealed.

A supervisory writ "is considered an extraordinary and drastic remedy that is to be issued only upon some grievous exigency." ***State ex rel. Dressler v. Circuit Ct. for Racine Cnty.***, 163 Wis. 2d 622, 630, 472 N.W.2d 532 (Ct. App. 1991). The party seeking the issuance of the writ must satisfy four requirements: (1) the circuit court (or judge) had a plain duty and either acted or intends to act in violation of that duty; (2) an appeal is an inadequate remedy; (3) grave hardship or irreparable harm will result in the absence of a writ; and (4) the party requesting the relief made the request promptly and speedily. ***State ex rel. CityDeck Landing LLC v. Circuit Ct. for Brown Cnty.***, 2019 WI 15, ¶30, 385 Wis. 2d 516, 922 N.W.2d 832 (internal quotation marks and quoted source omitted).

For the reasons we now explain, we conclude that Ridglan fails to show that the circuit judge acted or intends to act in violation of a plain duty. Accordingly, we need not address the remaining requirements for a supervisory writ.

"A plain duty must be clear and unequivocal and, under the facts, the responsibility to act must be imperative." ***State ex rel. Two Unnamed Petitioners v. Peterson***, 2015 WI 85, ¶80, 363 Wis. 2d 1, 866 N.W.2d 165 (internal quotation marks and quoted sources omitted). This does not mean that the duty must be "settled or obvious." ***State ex rel. DNR v. Wisconsin Ct. of Appeals***, 2018 WI 25, ¶11, 380 Wis. 2d 354, 909 N.W.2d 114. "There may be a plain duty even when it involves 'a novel question of law requiring harmonization of several statutory provisions.'" ***Id.*** (quoted source omitted).

Our analysis of whether the circuit judge violated a plain duty begins with the text of WIS. STAT. § 968.02(3) and case law interpreting it. The statute expressly specifies that the hearing under § 968.02(3) "shall be ex parte without the right of cross-examination." This statutory language suggests that the subject of the proposed prosecution, here Ridglan, shall not be permitted to participate in the hearing.

In ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110, our supreme court interpreted the statute to bar a subject's participation "in any way." *See* ***id.***, ¶18. At issue in ***Kalal*** was whether the two subjects of a petition under WIS. STAT. § 968.02(3) had standing to move for reconsideration of a circuit judge's decision to permit the filing of a complaint. *See* ***id.***, ¶¶18-19. In holding that they did not, the court in ***Kalal*** concluded that "[t]he statute does not confer upon the person who is the subject of a proposed prosecution the right to participate *in any way* or to obtain reconsideration of the ultimate decision reached." ***Id.***, ¶18 (emphasis added); *see also* ***id.***, ¶19 ("The statute expressly specifies an ex parte hearing and no right of cross-examination. If the Kalals have no right or standing to be heard at the hearing, they cannot claim a right or standing to be heard on a reconsideration motion.").[6]

Thus, the statutory text as interpreted in ***Kalal*** does not support a conclusion that the circuit judge here violated a plain duty, and if anything, it supports the opposite conclusion that

[6] The court in ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110, went on to explain that "[t]his is not to say that a judge's decision to issue a complaint pursuant to this procedure [in WIS. STAT. § 968.02(3)] is completely unreviewable." ***Id.***, ¶20. "A defendant named in a complaint issued pursuant to subsection (3) of the statute has the same opportunity to challenge in circuit court the legal and factual sufficiency of that complaint as a defendant named in a complaint issued [by the district attorney] pursuant to subsection (1)." ***Id.***

the judge was complying with her duties under the statute and ***Kalal***, both by refusing to consider Ridglan's brief and by refusing to allow Ridglan to participate in the July 10 hearing. Indeed, Ridglan acknowledges that ***Kalal*** "instructs that [Ridglan] may not participate in the *ex parte* hearing on July 10."

Ridglan argues, however, that this result is incompatible with its rights as a victim of the alleged crimes in the dismissed criminal case against Hsiung. Ridglan relies on victim rights provisions in Article I, section 9m of the Wisconsin Constitution, as amended in 2020. The amendment, commonly known as Marsy's Law, "broadly protects and expands crime victims' rights." ***Wisconsin Just. Initiative, Inc. v. WEC***, 2023 WI 38, ¶65, 407 Wis. 2d 87, 990 N.W.2d 122. Ridglan argues that these provisions in Marsy's Law impose a clear and unequivocal duty on the circuit judge to allow Ridglan to be heard in some manner in the proceedings under WIS. STAT. § 968.02(3).

The respondents disagree. They contend that there are multiple reasons why Marsy's Law does not apply to Ridglan in the context of these WIS. STAT. § 968.02(3) proceedings, let alone impose a plain duty on the circuit judge to allow Ridglan's participation.

The interpretation of constitutional provisions is a question of law that we review de novo. ***Black v. City of Milwaukee***, 2016 WI 47, ¶21, 369 Wis. 2d 272, 882 N.W.2d 333. "When interpreting a provision in the state constitution, we 'focus on the constitutional text, reading it reasonably, in context, and with a view of the provision's place within the constitutional structure.'" ***State v. M.L.J.N.L.***, 2024 WI App 11, ¶17, 411 Wis. 2d 174, 4 N.W.3d 633 (quoted source omitted).

Here, Ridglan relies primarily on Article I, section 9m(2)(i), a provision in Marsy's Law that addresses a victim's right to be heard. Ridglan points out that the provision specifies that victims have the right, upon request, "to be heard in any proceeding during which a right of the victim is implicated." WIS. CONST. art. I, § 9m(2)(i).

However, this provision is not as broad as Ridglan portrays it. Ridglan ignores the full text of the provision, which states that the victim has the right, upon request, "to be heard in any proceeding during which a right of the victim is implicated, including release, plea, sentencing, disposition, parole, revocation, expungement, or pardon." *See* WIS. CONST. art. I, § 9m(2)(i). The types of proceedings enumerated suggest that the provision is directed primarily at proceedings commonly associated with an underlying criminal case, here the dismissed case against Hsiung. Although it is possible that the right to be heard could attach to other types of proceedings, Ridglan does not persuade us that this provision clearly and unequivocally gives it the right to be heard in a proceeding under WIS. STAT. § 968.02(3), contrary to both the statutory language and ***Kalal***.

Other language in Marsy's Law supports this same conclusion. The list of victim rights, including the right to be heard, is preceded by prefatory language stating that the purpose of these rights is "to preserve and protect victims' rights to justice and due process *throughout the criminal and juvenile justice process.*" *See* WIS. CONST. art. I, § 9m(2) (emphasis added).[7] This reference to the "criminal and juvenile justice process" evokes proceedings attached to an

[7] Marsy's Law similarly provides that victims have the right to "reasonable protection from the accused *throughout the criminal and juvenile justice process*." WIS. CONST. art. I, § 9m(2)(f) (emphasis added).

underlying criminal (or juvenile) case that are part of the ordinary criminal (or juvenile) justice process.

Ridglan next relies on a separate provision in Marsy's Law, Article I, section 9m(4)(a), which relates to the enforcement of victim rights. This provision specifies that victims may enforce their rights "in any circuit court or before any other authority of competent jurisdiction." WIS. CONST. art. I, § 9m(4)(a).[8] Ridglan argues that the phrase "any other authority of competent jurisdiction" must be construed to allow victims to enforce their rights in proceedings other than "court" proceedings, including proceedings before a circuit judge under WIS. STAT. § 968.02(3); otherwise, the phrase would be surplusage. *See* ***Chvala v. Bubolz***, 204 Wis. 2d 82, 89, 552 N.W.2d 892 (Ct. App. 1996) ("We are to construe statutes to avoid surplusage.").[9]

[8] Article I, section 9m(4)(a) provides, in full, as follows:

> In addition to any other available enforcement of rights or remedy for a violation of this section or of other rights, privileges, or protections provided by law, the victim, the victim's attorney or other lawful representative, or the attorney for the government upon request of the victim may assert and seek in any circuit court or before any other authority of competent jurisdiction, enforcement of the rights in this section and any other right, privilege, or protection afforded to the victim by law. The court or other authority with jurisdiction over the case shall act promptly on such a request and afford a remedy for the violation of any right of the victim. The court or other authority with jurisdiction over the case shall clearly state on the record the reasons for any decision regarding the disposition of a victim's right and shall provide those reasons to the victim or the victim's attorney or other lawful representative.

[9] As Ridglan's argument recognizes, a proceeding under WIS. STAT. § 968.02(3) "is not a sitting of a court. The statute expressly provides that the proceeding is to be before a circuit judge[,] and there is an express distinction between a judge and a court." ***State ex rel. Newspapers, Inc. v. Circuit Ct. for Milwaukee Cnty.***, 124 Wis. 2d 499, 506, 370 N.W.2d 209 (1985).

We agree that the phrase "any other authority of competent jurisdiction" seems intended to refer to an authority other than a circuit court. It does not follow, however, that the phrase must be construed to include a circuit judge under WIS. STAT. § 968.02(3). The phrase may reasonably be construed to refer to one or more other authorities, such as the Parole Commission or the Pardon Advisory Board. We therefore reject Ridglan's surplusage argument.

In sum, Ridglan does not persuade us that the victim rights provisions in Marsy's Law impose a clear and unequivocal duty on the circuit judge, contrary to both statutory text and ***Kalal***, to allow Ridglan to participate in the proceedings under WIS. STAT. § 968.02(3).

We turn to Ridglan's alternative request that we direct the circuit judge to conduct the July 10 hearing in a manner that is closed to the public and sealed. Proceedings under WIS. STAT. § 968.02(3) are "presumptively open to the public and may be closed only upon a showing of a substantial, compelling reason to do so." ***State ex rel. Newspapers, Inc. v. Circuit Ct. for Milwaukee Cnty.***, 124 Wis. 2d 499, 501, 370 N.W.2d 209 (1985). The decision on whether to close the hearing is a discretionary decision for the circuit judge. ***Id.*** at 505. Here, Ridglan argues there are substantial and compelling reasons to close the July 10 hearing. It argues that a public hearing will likely cause it to suffer continued threats and other harms stemming from Hsiung's alleged criminal conduct.

We decline to grant Ridglan's request to direct the circuit judge to close or seal the July 10 hearing. First, Ridglan does not show that the judge had or has a plain duty to close or seal the hearing. As noted, the decision is discretionary in nature, and "courts grant supervisory writs only for 'non-discretionary' duties." ***State ex rel. Davis v. Circuit Ct. for Dane Cnty.***, 2024 WI 14, ¶26, 411 Wis. 2d 123, 4 N.W.3d 273 (quoted source omitted). Second, Ridglan

does not explain whether it asked the judge to seal or close the hearing. A judge does not violate a plain duty by declining to grant relief not sought. Third and finally, assuming that a closure or sealing request directed at the judge was futile because the judge refused or would have refused to consider it, Ridglan does not persuade us that this would violate a plain duty. If anything, the refusal to consider a closure or sealing request by Ridglan would seem consistent with ***Kalal***'s directive that WIS. STAT. § 968.02(3) "does not confer upon the person who is the subject of a proposed prosecution the right to participate in any way." *See* ***Kalal***, 271 Wis. 2d 633, ¶18.

Although Ridglan acknowledges that WIS. STAT. § 968.02(3) allows for a public hearing, it argues that a public hearing would be "absurd" given the circumstances here. Additionally, Ridglan urges us to consider how public hearings under § 968.02(3) could be abused in the future by opportunistic interest groups. We acknowledge the potential for abuse, but this potential has existed at least since ***Kalal***, if not before, and this court is not free to modify the statute or ***Kalal***.

Therefore,

IT IS ORDERED that the petition for a supervisory writ is denied.

Samuel A. Christensen
Clerk of Court of Appeals