

Circuit Court for Montgomery County
Case No. 480002-V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 533

September Term, 2020

RITA MICHELLE TROTTER

v.

VICTOR BRITO, *et al.*,

Arthur,
Shaw Geter,
Ripken

JJ.

Opinion by Shaw Geter, J.

Filed: June 3, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from the dismissal of a complaint for a Writ of Mandamus in the Circuit Court for Montgomery County. Appellant, Rita Michelle Trotter, sought to have the Rockville City Police Department, appellees, expunge information concerning a 2006 internal investigation by her former employer, the Montgomery County Police Department, regarding improper conduct. Trotter filed a complaint requesting a temporary restraining order, a preliminary injunction, permanent injunction and a writ of mandamus. The circuit court granted the preliminary injunction which enjoined appellees from “referencing the alleged instances of untruthfulness” contained in Trotter’s background investigation file, and a June 3, 2019 letter from the State’s Attorney Office for Montgomery County, during an administrative hearing on unrelated charges. After the hearing, appellees filed a Motion to Dismiss and/or a Motion for Summary Judgment, regarding the permanent injunction and writ of mandamus. The court granted the appellee’s motion to dismiss and this timely appeal followed.

Appellant presents the following question for our review:

1. Did the Circuit Court err in dismissing Appellant’s complaint for Writ of Mandamus?

FACTUAL BACKGROUND

Appellant, Rita Michelle Trotter (“Trotter”), was hired as a law enforcement officer by the Montgomery County Police Department (“MCPD”) in 2006. Shortly thereafter, she applied to the Rockville City Police Department (“RCPD”). During the application process and background investigation, RCPD became aware that Trotter’s police powers had been

suspended pending an internal investigation concerning “allegations that [Trotter] did not tell the truth or placed incorrect information on a traffic citation.” Notwithstanding the investigation, Trotter was offered employment with RCPD on July 10, 2006, which she accepted. In October of 2006, Trotter was notified by MCPD that the internal investigation was complete, and that charges had been sustained against her for Neglect of Duty/Unsatisfactory Performance and Untruthful Statements. Trotter has remained a member of RCPD since 2006.

In June of 2019, Trotter received a letter signed by the State’s Attorney for Montgomery County, stating:

The purpose of this letter is to formally advise you that, under the Maryland Rules, our Office is required to make certain disclosures to defense counsel in all future cases where you will be called as a witness.

Specifically, we must disclose that the files of the Office of the Chief of the Rockville City Police Department may contain information which may be discoverable under Rule 4-263(d)(6)(A) pertaining to “evidence of prior conduct to show the character of the witness for untruthfulness.”

You should expect that defense attorneys will issue subpoenas seeking the contents of these files. In addition, prosecutors will consider this disclosure obligation when making decisions on whether or not to go forward in cases which you are involved.

Approximately a month later, Trotter sent a request to the Acting Chief of Police of MCPD to confirm the status of any investigative material in her file, noting that in accordance with the Collective Bargaining Agreement between Montgomery County and the Union representing the law enforcement officers of MCPD, FOP Lodge #35, all internal affairs records pertaining to a specific employee five (5) years after their separation from MCPD are to be destroyed. MCPD replied and stated, “[t]he Montgomery County

Department of Police Internal Affairs Division does not have any files pertaining to PO1 Trotter as the employee separated from the Montgomery County Department of Police more than 5 years ago.”

In August 2019, the RCPD charged Trotter with violating several of its departmental rules and regulations, unrelated to the 2006 charges. Trotter requested an administrative hearing. Prior to the hearing, Trotter filed a complaint in the Circuit Court for Montgomery County against RCPD and the City of Rockville seeking a temporary restraining order, preliminary injunction, permanent injunction, and writ of mandamus. The court issued a preliminary injunction, enjoining RCPD from “referencing the alleged instances of untruthfulness contained in two (2) pages of [Trotter’s] background investigation file, as well as the June 3, 2019 letter from the State’s Attorney Office for Montgomery County (“SAO”), at the upcoming hearing board . . .” The court scheduled a subsequent hearing to determine whether a permanent injunction and writ of mandamus should be issued.

Following the administrative hearing, appellees filed a Motion to Dismiss and/or Motion for Summary Judgment. At the circuit court motions hearing, appellees argued that there was no basis for the relief requested. Trotter argued the writ was necessary because in the future, “if any potential charges were raised against Corporal Trotter . . . and if the hearing board finds that Corporal Trotter is guilty of any violations of the Department, general orders[,] or policy[;] then the hearing board is allowed to look at things such as past performance and [Trotter’s] disciplinary record to determine what . . . discipline . . . would be appropriate.” Trotter argued that RCPD might attempt to use the information previously enjoined against her in a future hearing. The City of Rockville

countered that Trotter’s concerns were speculative and that if she were subsequently charged, she would have the opportunity to seek appropriate relief from the court. At the conclusion of the hearing, the court granted the motion to dismiss, finding that a writ of mandamus was not “the proper remedy.”

DISCUSSION

In Maryland, there are two types of mandamus actions: “one for the judicial enforcement of non-discretionary acts, the other for the judicial review of adjudicatory administrative decisions.” *Wilson v. Simms*, 380 Md. 206, 228 (2004); *See also Mayor and City Council of Baltimore v. ProVen Mgmt., Inc.*, 472 Md. 642, 669 n.9 (2021) (revisiting the established differences between common law mandamus and the administrative mandamus). A common law mandamus is one which “require[es] a public official to perform a non-discretionary duty or function—to enforce the law . . . [.]” *Id.* (citing *City of Seat Pleasant v. Jones*, 364 Md. 663, 673 (2001); *See also ProVen Mgmt., Inc.*, 472 Md. 642, 669 n.9 (2021) (“Common law mandamus seeks the judicial enforcement of ministerial non-discretionary acts.”). Ordinarily, the grant of this type of mandamus “involves two complementary requirements”: (1) the party applying for the writ of mandamus must have a *clear legal right* to performance of the particular duty imposed on the agency; and (2) the agency action under review is *not discretionary* or dependent on personal judgment. The action must be “purely ministerial” or the public official’s obligation to act is “clear and unequivocal.” *See Falls Road Community Ass’n v. Baltimore County*, 437 Md. 115, 139–140 (2014) (citations omitted) (emphasis added). Maryland Rule 15-701 addresses common law mandamus actions. *See Priester v. Baltimore Cty*,

Maryland, 232 Md. App. 178, 187 n.8 (2017); *See also* Maryland Rule 15-701(a) (explaining that the “Rule applies to action for writs of mandamus *other than administrative mandamus* pursuant to Title 7, Chapter 400 of these Rules or mandamus in aid of appellate jurisdiction”) (emphasis added).

An “administrative mandamus is a remedy that authorizes judicial review of administrative decisions where there is both a lack of an available procedure for obtaining review *and* an allegation that the action complained of is illegal, arbitrary, capricious or unreasonable.” *ProVen Mgmt., Inc.*, 472 Md. 642, 669 n.9 (2021) (quotations and citation omitted); *See also* Maryland Rule 7-401(a) (administrative mandamus “govern actions for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law”). Maryland Rule 7-401 governs actions for a writ of administrative mandamus. The present case is an appeal from the denial of a common law mandamus.

Appellant argues that RCPD’s decision to notify the SAO of the potential impeachment information “affects [her] employment” with RCPD and the City of Rockville; and, because she “has a legal interest in her employment, she similarly must have an interest in her employer disclosing confidential personnel information which will undoubtedly affect her ability to perform her duties.” Appellant asserts that she has no avenue to address the notification by RCPD to the SAO, that she has a substantial right and that is her property interest in retaining her position which requires procedural due process.

A writ of mandamus under common law, however, requires a clear legal right, which is a right to the performance of a ministerial act.¹ “Ministerial acts are duties in respect to which nothing is left to discretion and are distinguished from those allowing freedom and authority to make decisions and choices.” *ProVen Mgmt., Inc.*, 472 Md. 642, 670 (2021). “[A] writ of mandamus will not lie if the petitioner’s right is unclear . . . [.]” *Wilson*, 380 Md. at 223. “[I]f the right be doubtful, or the duty discretionary, or of a nature to require the exercise of judgment, or if there be any ordinary adequate legal remedy to which the party applying could have recourse, [the] writ will not be granted.” *Id.* (quoting *Jones*, 364 Md. at 673).

Appellant also contends she has “a clear property interest in retaining her position,” and as a result, she “should have an interest in Chief Brito and RCPD making disclosures which affect her ability to retain her position.” Appellant’s only authority to support this contention is *Perry v. Department of Health and Mental Hygiene*, 201 Md. App. 633, 640-41 (2011), where this Court reviewed a circuit court’s ruling under Md. Rule 7-401 which addresses administrative mandamus actions and held that an individual did not have a

¹ Maryland courts have long recognized that:

It is well established that common law mandamus is an extraordinary remedy that is generally used to compel inferior tribunals, public officials or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which duty the party applying for the writ has a clear legal right. Or stated another way, “[a] common law writ of mandamus is one where the relief sought involves the traditional enforcement of a ministerial act (a legal duty) by recalcitrant public officials.”

ProVen Mgmt., Inc., 472 Md. at 669–70 (citations omitted).

substantial right to a promotion, as it was a position the individual never held. Appellant provides no authority for her argument that she has a *clear legal right* to the redaction of background investigation documents controlled by RCPD. Nor, does she provide any argument that RCPD has a legal duty to redact the information.

In *Wilson v. Simms*, the Court of Appeals, in determining that a common law writ of mandamus was not proper, held that while there was a clear legal right for the petitioner to have their employment position reinstated by the Order of an Administrative Law Judge, the petitioner did not have clear legal right to back pay because it was not expressly written in the order. *See Wilson v. Simms*, 380 Md. 206, 229 (2004). The Court found that the applicable statute, “Section 12-402(a) [of the State Personnel and Pensions Article] defines remedies that *may* be provided to aggrieved state employees, but it does not guarantee them.” *Id.* at 225 (emphasis added). “In order for a grievant such as Wilson to be entitled to these remedies, the ALJ or decision maker must clearly and indisputably ‘determine’ them because, although the statute allow those remedies to be provided, *it does not explicitly command it.*” *Wilson*, 380 Md. at 226-27.

Under the Code of Maryland Regulations, all law enforcement agencies are required to maintain a record of an applicant’s background investigation, which includes “interviews of current and past employers within the last 5 years.” COMAR 12.04.01.05(A)(2)(d)(iii). The Law Enforcement Officers’ Bill of Rights (“LEOBR”) Maryland Code, Public Safety Article Section §3-110 provides:

(a) On written request, a law enforcement officer may have expunged from any file the record of a formal complaint made against the law enforcement officer if:

- (1)(i) the law enforcement agency that investigated the complaint:
 - 1. exonerated the law enforcement officer of all charges in the complaint; or
 - 2. determined that the charges were unsustainable or unfounded;or
- (ii) a hearing board acquitted the law enforcement officer, dismissed the action, or made a finding of not guilty; and
- (2) at least 3 years have passed since the final disposition by the law enforcement agency or hearing board.

Evidence of formal complaints

(b) Evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if the complaint resulted in an outcome listed in subsection (a)(1) of this section.

MD PUBLIC SAFETY §3-110 (West). We note that while the provision allows for the expungement of documents, “it does not explicitly command it.” *Wilson*, 380 Md. at 226. Thus, appellant has no clear legal right to the redaction or expungement of the documents in question.

Appellant also asserts that “it was ‘arbitrary and capricious’ for Chief Brito and RCPD to (1) search through Trotter’s personal file, unprompted by the SAO . . . [,] (2) conclude that Trotter had made untruthful statements while employed with MCPD merely due to the reference of an ‘allegation’ that untruthful statements had been made . . . [,] and (3) to notify the SAO . . . [.]” However, appellant failed to establish her claim that other officers’ files were not reviewed and that the department was not merely engaging in updating its record because of legal requirements. We found no evidence that RCPD engaged in arbitrary or capricious activity and it appears to be a bald assertion by appellant. In addition, appellant’s argument that she could potentially be harmed by further disclosure

is speculative as it is based on the possibility of another investigation due to the chance of a future violation.

The issuance of a common law mandamus requires a clear legal right and a ministerial duty where no discretion is given to the agency or decision maker. *See ProVen Mgmt., Inc.*, 472 Md. at 669–70; *Wilson*, 380 Md. at 223. Here, there is neither a clear legal right or ministerial duty. As such, we hold, the circuit court properly granted appellee’s motion to dismiss.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**