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DISTRICT IV

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

2025AP646-W

State of Wisconsin ex rel. Josh Kaul v. Elon Musk
(L.C. # 2025CV1087)

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

Wisconsin Attorney General Josh Kaul petitions for a supervisory writ, and also moves for emergency temporary relief in the form of an order barring respondents Elon Musk and America PAC from taking certain actions. Unlike the circuit courts and Wisconsin Supreme Court, this court's writ jurisdiction is limited to our supervisory authority over circuit courts. We conclude that the petition fails to show that the Attorney General is entitled to any form of relief

that this court is permitted to provide. Therefore, we deny the petition ex parte under WIS. STAT. RULE 809.51(2) (2023-24).¹

The petition alleges that on Friday, March 28, 2025, the Attorney General filed a complaint in the circuit court naming Musk and America PAC as defendants.² The complaint alleged conduct that, quoting the complaint, “demonstrates an intention to violate” WIS. STAT. § 12.11, which prohibits various forms of election bribery. The petition alleged that the payments in question are set to occur on Sunday, March 30, 2025. The Attorney General also moved the circuit court for an ex parte temporary restraining order by the close of business that day. “Ex parte” means without receiving a response from other parties.

The petition alleges that the circuit court “refused to hear the motion for a temporary restraining order prior to the event on Sunday.” However, the petition does not provide any details about an alleged refusal, such as the manner in which any refusal was communicated to the petitioner or any reasoning that the court provided. And, the petition does not allege that the circuit court denied the motion.

The petition asks this court to grant a supervisory writ and issue emergency temporary relief prohibiting Musk and America PAC from further promoting “a million-dollar giveaway” to

¹ Due to the exigent nature of this petition, counsel for the respondents have not yet filed a notice of appearance in this court. As a courtesy, a copy of this order is being emailed to the non-Wisconsin attorneys who the petitioner has identified as attorneys of the respondents who were identified in other correspondence.

All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

² The Attorney General submitted the petition to this court outside of normal business hours, the parties then separately brought the submission of the petition to the attention of this court, and we directed the clerk of this court to accept the petition for filing.

attendees of the Sunday event, and prohibiting them from “making any payments to Wisconsin electors to vote.” Alternatively, if we do not grant that relief, the Attorney General asks this court to order the circuit court to grant that relief.

We emphasize that, although most of the matters that proceed through this court are appeals from a ruling by a circuit court, the current filing in this court is not an appeal. Instead, it is a writ petition, which is a form of original action in this court. This distinction is key to understanding the analysis that follows.

Unlike the circuit court or the supreme court, this court has original jurisdiction to hear a petition for a writ only if the petition is related to our supervisory or appellate authority over circuit courts. *State ex rel. Swan v. Elections Board*, 133 Wis. 2d 87, 394 N.W.2d 732 (1986) (citing WISCONSIN CONSTITUTION, art. VII, § 5(3); *cf. id.*, art. VII, §§ 3(2) and 8 (providing for supreme court and circuit court original jurisdiction)). Due to this limitation, this court lacks original jurisdiction to decide, in the first instance, the underlying merits of the complaint that was filed in the circuit court. In other words, we are not permitted to be the first court to decide whether the respondents are engaged in the conduct that is alleged, or to decide the legal status of that conduct. This means that we do not have writ jurisdiction to require or prohibit any specific action by respondents Musk or America PAC. Our writ jurisdiction is limited to requiring or prohibiting action by the circuit court.

The petition correctly cites the law relevant to supervisory writs. The petitioner must show that: (1) an appeal is an inadequate remedy; (2) grave hardship or irreparable harm will result; (3) the duty of the trial court is plain and it must have acted or intends to act in violation

of that duty; and (4) the request for relief is made promptly and speedily. *State ex rel. Kalal v. Dane County Cir. Ct.*, 2004 WI 58, ¶17, 271 Wis. 2d 633, 681 N.W.2d 110.

Our focus is on whether the circuit court has violated a plain duty. The petitioner's only allegation of a violation of a plain duty by the circuit court appears to be that court's alleged refusal to act on the motion for a restraining order filed by the Attorney General. If we were to conclude that the circuit court violated such a duty, the mostly likely form of relief that would be appropriate would be to order the circuit court to hear the motion. However, the petition does not ask for this relief.

Nonetheless, we have considered whether the petition shows, on its face, that the circuit court has violated a plain duty that supports this relief. We conclude, based on the facts alleged in the petition to this court, and in light of the petition's minimally developed legal argument showing how these facts satisfy the plain-duty element, that the petitioner has not shown that the circuit court had a plain duty to proceed on the Attorney General's motion for a restraining order before Sunday, March 30, 2025.

We next consider the relief that the petition does ask for, as to the circuit court. The petition asks that we order the circuit court to grant the temporary restraining order. We decline to issue this order. Because we have concluded that the petitioner has not shown that the circuit court violated a plain duty by not acting on the Attorney General's motion, it necessarily follows that the circuit court did not violate a plain duty by declining to grant the requested relief that might have resulted from it proceeding.

Moreover, the petitioner's request that we order the circuit court to grant the motion for a temporary restraining order is no different from asking us to decide the merits of the motion,

which we cannot do for the reasons discussed above. As discussed, this court lacks original jurisdiction on which to address the merits of the case, but instead we are limited to exercising the writ jurisdiction that gives us supervisory authority over circuit courts. The petition now before us does not show that the legal requirements for that relief are met.

We may act *ex parte* in denying a writ petition. WIS. STAT. RULE 809.51(2). For the reasons stated above, we do so in this case.

IT IS ORDERED that the writ petition is denied *ex parte* under WIS. STAT. RULE 809.51(2).

Samuel A. Christensen
Clerk of Court of Appeals