

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Parke Little,Supreme Court Case No. 20170222
District Court Case No. 45-2016-CV-924

Appellant/Petitioner,

APPELLANT'S BRIEF

v.

Stark County Sheriff on behalf
of Stark County Sheriff's Office,**APPEAL FROM THE ORDER OF THE
STARK COUNTY DISTRICT COURT,
THE HONORABLE STACY LOUSER,
DENYING A PETITION FOR WRIT OF
MANDAMUS**Appellee/Respondent.

Thomas F. Murtha IV
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701-227-0146
Attorney for Appellant

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[¶3] JURISDICTIONAL STATEMENT

[¶4] The district court had jurisdiction over this case pursuant to N.D. Const. Art. VI § 8, N.D.C.C. § 27-05-06. This Court has jurisdiction over this appeal under N.D. Const. Art. VI § 6. This appeal is timely under N.D.R.App.P. 4(a)(1).

[¶5] STATEMENT OF THE ISSUES ON APPEAL

The District Court abused its discretion because the evidence presented at the hearing does not support the District Court's Analysis or Order denying Mr. Little's Petition for the issuance of a writ of mandamus pursuant to N.D.C.C. § 32-34-01.

[¶6] STATEMENT OF THE CASE

[¶7] Appellant, Parke Little, appeals to the Supreme Court of North Dakota from the Order of the Stark County District Court dated April 10, 2017, and from each and every part thereof, including the Memorandum filed by the Honorable Stacy Louser, District Judge, denying his Petition for a Writ of Mandamus that would require the Stark County Sheriff to comply with the requirements of N.D.C.C. § 37-19.1-04, subsection 1, to send him the required notice.

[¶8] STATEMENT OF THE FACTS

[¶9] The Appellant, Parke Little, is a disabled war veteran. Hearing Transcript page 8, line 15-21 (T. 8:15-21).

[¶10] Mr. Little submitted a written application to the Stark County Sheriff for employment as a Stark County Deputy Sheriff on July 7, 2008 indicating that he was a veteran. T. 7:25-8:6. Hearing Exhibit 1, Court Doc ID#16.

[¶11] Mr. Little was interviewed for the position of Stark County Deputy Sheriff on November 19, 2008. T. 9:19-23; Hearing Exhibit 1, Court Doc ID#16.

[¶12] Another individual was hired for the position for which Mr. Little applied. T.

10:12-14. Mr. Little did not receive notification by certified mail that employment had been refused as required by N.D.C.C. § 37-19.1-04, subsection 1. T. 10:15-11:4.

[¶13] LAW AND ARGUMENT

[¶14] Standard of Review

[¶15] N.D.C.C. § 32-34-01 states:

The writ of mandamus may be issued by the supreme and district courts to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is precluded unlawfully by such inferior tribunal, corporation, board, or person.

[¶16] A district court’s decision on whether to issue a writ of mandamus will not be reversed unless the writ should not be issued as a matter of law or the district court abused its discretion. Wilson v. Koppy, 2002 ND 179, ¶ 12, 653 N.W.2d 68. “A court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner, its decision is not the product of a rational mental process leading to a reasoned determination, or it misinterprets or misapplies the law.” City of Bismarck v. Mariner Constr., Inc., 2006 ND 108, ¶ 8, 714 N.W.2d 484.

Sorum v. Dalrymple, 2014 ND 233, ¶ 8, 857 N.W.2d 96, 99.

[¶17] The District Court abused its discretion because the evidence presented at the hearing does not support the District Court’s Analysis or Order denying Mr. Little’s Petition for the issuance of a writ of mandamus pursuant to N.D.C.C. § 32-34-01.

[¶18] The District Court’s finding that “the record does not clearly show that Little applied for and was denied employment as the Stark County Deputy Sheriff” is an abuse of discretion. Order and Memorandum, page 4, paragraph 10 (Order ¶10). Mr. Little was the only witness to testify at the hearing and his testimony was unrefuted. Mr. Little testified that he was first employed as a “special deputy” by then Sheriff Tuhy in 2008. T. 7:2-14. After becoming a “Special Deputy” Mr. Little applied for the job of “Deputy”

and submitted an application for that same position on July 7, 2008 and was interviewed for that position on November 19, 2008. T. 7:25-8:11; T. 9:19-23; Hearing Exhibit 1, Court Doc ID#16.

[¶19] Despite the District Court's finding at paragraph 10 of the Order that "the record reflects that Little applied for and was employed as a special reserve deputy" and at paragraph 11 that Mr. Little was "employed as a Stark County Special Reserve Deputy" no evidence was ever presented that Mr. Little was hired as a "Special Reserve Deputy." Mr. Little testified that he was hired as a "Special Deputy" not a "Special Reserve Deputy." T. 7:20-21.

[¶20] Mr. Little had already been hired as a "Special Deputy" when he applied for the job of "Deputy" on July 7, 2008 and interviewed for the job of "Deputy" on November 19, 2008 while he was a "Special Deputy." T. 17:5-11. The Appellee offered Exhibit A and argued that Mr. Little applied for the position of "Special Reserve Deputy" because that box was checked on the form, but this does not negate the fact that Mr. Little applied for and interviewed for the position of "Deputy" as indicated on Exhibit 1. Mr. Little explained in his testimony that he was asked to fill out Exhibit A just to get more information from him and that Sheriff Tuhy checked the box marked "Special Reserve Deputy." No evidence was presented that Mr. Little filled out Exhibit A to apply for the position of "Special Reserve Deputy." The evidence presented at the hearing proved that Mr. Little applied for the position of "Deputy," and was not hired for the position of "Deputy."

[¶21] Despite applying for the position of "Deputy" and not being hired for that position Mr. Little did not receive the notice required by N.D.C.C. § 37-19.1-04, subsection 1,

which states:

If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not given the preference provided in section 37-19.1-02 or 37-19.1-03, the applicant, within fifteen calendar days after notification by certified mail that employment has been refused, may request a hearing as provided in subsection 3. The notification from the employer must include the reasons for nonselection, inform the applicant of the right to an appeal hearing, inform the applicant of the requirement that the request for a hearing must be filed by certified mail within fifteen calendar days after the notification, inform the applicant that a request for an appeal hearing must be made to the commissioner of veterans' affairs at the included commissioner's mailing address, and inform the applicant that if the applicant requests an appeal, the applicant must mail a copy of the request for an appeal hearing to the employer or employing agency.

Because Mr. Little had no other remedy the district court had jurisdiction to issue a writ of mandamus to the Stark County Sheriff to comply with the requirements of N.D.C.C. § 37-19.1-04 pursuant to N.D.C.C. § 32-34-01 and compel the Stark County Sheriff to send the required notice to Mr. Little.

[¶22] N.D.C.C. § 32-34-01 states:

The writ of mandamus may be issued by the supreme and district courts to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is precluded unlawfully by such inferior tribunal, corporation, board, or person.

It was an abuse of discretion for the District Court to not issue the requested writ because there is not a plain, speedy, and adequate remedy available to Mr. Little in the ordinary course of law. N.D.C.C. § 32-34-02.

[¶23] **CONCLUSION**

[¶24] Mr. Little respectfully requests that this Court reverse the District Court to issue its Writ of Mandamus requiring the Stark County Sheriff to comply with the

requirements of N.D.C.C. § 37-19.1-04, subsection 1, and send Mr. Little the required notice.

Dated: September 13, 2017

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CERTIFICATE OF SERVICE

Stark County Sheriff on behalf of Stark County
Sheriff's Office,

Appellee/Respondent.

[¶1] My name is Thomas F. Murtha IV and I am an attorney licensed to practice law in the State of North Dakota. My attorney identification number is 06984.

[¶2] On September 13, 2017 I served a true and accurate copy of the following:

APPELLANT'S BRIEF
APPELLANT'S APPENDIX

on Appellee/Respondent's attorneys Michael Waller and Benjamin Sand by email to the following addresses: mwaller@crowleyfleck.com and bsand@crowleyfleck.com.

Dated: September 13, 2017

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