

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 24, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 99-0820-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

GAIL B. EDER,

PETITIONER-RESPONDENT,

V.

DANIEL P. MERLINE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Jefferson County:
ARNOLD K. SCHUMANN, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Daniel Merline appeals from an injunction which prohibits him from committing acts of domestic abuse against Gail Eder, and from contacting her without prior written consent, except to discuss child placement. Merline claims the facts adduced at the hearing were insufficient to establish

grounds for a domestic abuse injunction against him. Upon reviewing the record, we disagree and affirm.¹

BACKGROUND

Eder petitioned for an injunction based upon an alleged pattern of verbal and physical abuse by Merline during the course of the parties' marriage and divorce proceedings. At the injunction hearing, the court limited her testimony to those incidents that had occurred in recent weeks causing her to believe she was in imminent danger of physical harm.

Eder testified that Merline had screamed at her on several occasions when they had met to exchange custody of their three-year-old daughter, calling Eder a "bitch" and a "slut" in front of the child, and telling her he'd like to dance on her grave. Eder said that during the most recent custody exchange, she removed her sleeping daughter from her car and approached Merline's car. Merline started screaming at her not to go near his car and called her a disgusting bitch in front of the daughter. The screaming woke the daughter, who heard the epithet Merline directed toward Eder and began to cry. As Eder set their daughter in Merline's car, Merline grabbed Eder's wrists, twisted them and shoved her backwards. Eder's nine-year-old son, who observed the incident from Eder's car, started honking the horn to attract attention in an effort to protect his mother.

Eder said she was crying and shaking so badly after the incident that she could barely drive. She went to the police station to file a battery complaint, which Merline pointed out was never prosecuted. In the days that followed, she

¹ This appeal was expedited pursuant to RULE 809.17, STATS.

said she was unable to sleep or eat. She said she believed that Merline had access to his father's firearms and was constantly afraid that he would harm her.

STANDARD OF REVIEW

The determination of whether proper grounds exist for issuing an injunction is a mixed question of fact and law. *See M.Q. v. Z.Q.*, 152 Wis.2d 701, 708, 449 N.W.2d 75, 78 (Ct. App. 1989). We will not set aside the findings of the circuit court unless they are clearly erroneous. *See* § 805.17(2), STATS. However, we will draw an independent conclusion as to whether the established facts fulfill the legal standards for abuse necessary to support an injunction. *See M.Q.*, 152 Wis.2d at 708, 449 N.W.2d at 78.

ANALYSIS

Section 813.12(4)(a)3, STATS., permits an injunction to be issued when there are reasonable grounds to believe that the respondent has engaged or may engage in domestic abuse. Domestic abuse includes the intentional infliction of physical pain or injury or the threat to inflict such pain or injury. *See* § 813.12(1)(a), STATS.

Merline asserts that the only evidence presented at the hearing to show he had engaged or might engage in domestic abuse was his statement that he would like to dance on Eder's grave someday. He argues that the statement fell short of a threat to inflict physical harm, and that even if the statement could be construed as a threat, it was insufficient to provide reasonable grounds for an injunction.

From the outset, we disagree with Merline's characterization of the facts presented at the hearing.² Merline's grave-dancing comment was *not* the only evidence which tended to show he had engaged in or might engage in, domestic abuse. Eder also testified that Merline had twisted her wrists and shoved her backwards. We are satisfied that twisting a person's wrist is likely to cause the person physical pain, and thus that Merline's conduct constituted past domestic abuse. That evidence was sufficient in and of itself to support the injunction.

In light of our determination, we need not further consider whether Merline's comment that he would like to dance on Eder's grave, in conjunction with his shouting and name-calling, could reasonably be construed as a threat of future domestic abuse.

By the Court.—Order affirmed.

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

² Eder also submitted an affidavit which mentioned a number of instances of physical abuse by Merline throughout the course of the parties' marriage. The trial court excluded the affidavit as irrelevant, apparently because it was too remote in time. We do not address whether the incidents presented in the affidavit would also have supported the injunction because we have not been asked to review the trial court's exclusion of the affidavit.

