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DISTRICT IV

June 24, 2016

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

2015AP2460

Petitioner v. Nikolai Marjanovic (L.C. # 2015CV2682)

Before Lundsten, Sherman and Blanchard, JJ.

Nikolai Marjanovic, by counsel, appeals an order of the circuit court enjoining him from having contact with the petitioner. *See* WIS. STAT. § 813.125 (2013-14).¹ Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

The petitioner and Marjanovic were in a relationship for two years and lived together for part of that time. The petitioner filed a petition for a harassment injunction against Marjanovic. After a hearing, the circuit court granted the injunction for a period of four years. Marjanovic

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

now appeals, arguing that the circuit court erred by granting the injunction based on an alleged incident that was not set forth in the petition. Marjanovic also argues that the court failed to exercise its discretion in setting the duration of the injunction, instead relying solely upon the recommendation of the petitioner.

First, we will address Marjanovic's argument that the circuit court improperly granted the injunction based upon an alleged incident that was not set forth in the petition. Specifically, he argues that the court granted the injunction based solely on an incident in which Marjanovic allegedly pushed the petitioner in the chest. This argument fails for a number of reasons. As an initial matter, we note that Marjanovic asserts in multiple places in his brief that the petitioner did not allege physical abuse in the petition. Marjanovic's assertions are contradicted by the petition on its face, which alleges on the first page that Marjanovic engaged in "emotional [and] physical abuse" directed at the petitioner. Therefore, to the extent that Marjanovic argues that no physical abuse was alleged or that it was insufficiently alleged, we reject those arguments.

We also are not persuaded by Marjanovic's arguments that the court relied solely on the chest-pushing incident as a basis for the injunction or that the evidence presented at the hearing was insufficient to support the injunction. Under WIS. STAT. § 813.125(4)(a)3., a court may grant an injunction if the court finds "reasonable grounds to believe" that the respondent has engaged in harassment with intent to harass or intimidate the petitioner. Our review of a harassment injunction presents a mixed question of fact and law. *Welytok v. Ziolkowski*, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. We will not set aside the circuit court's factual findings unless those findings are clearly erroneous. *Id.*; WIS. STAT. § 805.17(2). Marjanovic concedes in his brief that the circuit court's findings in this case are not clearly erroneous. We turn, then, to the issue of whether reasonable grounds existed for the circuit court

to believe that Marjanovic engaged in harassment with intent to harass or intimidate the petitioner. This is a question that we review independently. *Welytok*, 312 Wis. 2d 435, ¶23.

For purposes of restraining orders and injunctions, harassment is defined, in relevant part, as “[s]triking, shoving, kicking or otherwise subjecting another person to physical contact” or “threatening to do the same.” WIS. STAT. § 813.125(1)(a). Harassment is also defined as “[e]ngaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.” WIS. STAT. § 813.125(1)(b). The petitioner testified that Marjanovic pushed her in the chest. Marjanovic did not deny that he pushed her. He stated that he “might have.” In addition to the pushing incident, the petitioner testified to several other behaviors that qualify as harassment. She testified that Marjanovic left out a loaded gun and that, even after she told him that his behavior made her feel unsafe and uncomfortable, he did not change his behavior. Marjanovic did not dispute putting a gun out on the kitchen table. The petitioner also testified that there were times when she tried to leave, but Marjanovic would physically stop her from leaving the house or block her from closing her car door. Additionally, the petitioner testified that Marjanovic threatened to show up at her job. Marjanovic admitted to texting the petitioner about showing up at her work place and calling her there multiple times in one day, but denied that he intended to intimidate or threaten her.

Whether or not to finally grant an injunction is within the sound discretion of the circuit court, and we generally look for reasons to sustain discretionary rulings. *Welytok*, 312 Wis. 2d 435, ¶24. When we read the transcript of the injunction hearing as a whole, it is apparent to us that the circuit court found the petitioner’s testimony to be credible. Generally, we will not overturn credibility determinations on appeal. See *Global Steel Prods. Corp. v. Ecklund Carriers, Inc.*, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269. It is also apparent to

us that, although the court referred specifically to the shoving incident and the gun incident when making its ruling, the court relied on all of the petitioner's allegations in issuing the injunction. We are satisfied, in light of all of the above, that the record supports the circuit court's conclusion that there were reasonable grounds to believe that Marjanovic engaged in harassment with the intent to harass or intimidate the petitioner, such that issuing the injunction was a proper exercise of the court's discretion under WIS. STAT. § 813.125(4).

We turn next to Marjanovic's argument that the circuit court failed to exercise its discretion in setting the duration of the injunction. Marjanovic does not argue that the injunction is too long in duration or too broad in scope. Rather, he argues that the judge "apparently thought that he was supposed to let the petitioner select the duration of the injunction." We do not read the hearing transcript in that way. The court informed the petitioner that the duration of the injunction could be up to four years, reflecting a correct understanding of the law. *See* WIS. STAT. § 813.125(4)(c). A reasonable interpretation of the court's question to the petitioner is that the court wanted her input regarding the duration of the injunction, which was a proper consideration in the exercise of its discretion. *See Welytok*, 312 Wis. 2d 435, ¶24 (the scope of a harassment injunction lies within the sound discretion of the circuit court). We are confident, based on the hearing transcript in its entirety, that the judge believed the full four years were justified. We interpret the judge's question to the petitioner about the duration of the injunction not as a failure to exercise its discretion, but simply as a willingness to entertain the notion from the petitioner that something less than four years might suffice.

In sum, we are satisfied that the circuit court did not erroneously exercise its discretion in issuing the injunction and in setting its duration.

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals