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DISTRICT IV

May 9, 2019

To:

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

2018AP1092	In the interest of G.J.-E.J., a person under the age of 18: D.M.J. v. C.W.W. (L.C. # 2018CV94)
2018AP1093	In the interest of I.C.J., a person under the age of 18: D.M.J. v. C.W.W. (L.C. # 2018CV95)

Before Sherman, Blanchard and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

C.W.W. appeals child abuse injunctions granted to D.M.J.¹ The injunctions prohibit C.W.W. from having contact with D.M.J.'s two minor children. Based upon our review of the

¹ These cases have been consolidated for purposes of disposition.

briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).² We summarily affirm.

In March 2018, D.M.J. petitioned for child abuse injunctions to prohibit C.W.W. from having contact with D.M.J.’s two minor children. D.M.J. attached to the petitions a February 2018 criminal complaint charging C.W.W. with sexually assaulting an older child in the same household with the younger children named in the petitions. C.W.W. moved to dismiss the petitions or, in the alternative, for appointment of a guardian ad litem (GAL). C.W.W. argued that D.M.J. had not stated grounds for the child abuse injunctions because he had not alleged that C.W.W. had any sexual contact with the younger children. C.W.W. also asserted that he was in a long-term live-in relationship with the children’s mother, and that his removal from the home was disruptive to the family and the younger children. The circuit court denied the motion. After an injunction hearing, the circuit court granted the injunctions.

A circuit court may order the appointment of a guardian ad litem for the child victim in a child abuse injunction action. *See* WIS. STAT. §§ 813.122(3)(b)1m. and 48.235(1)(a). Use of the word “may” creates a presumption that the statute is permissive, making the circuit court’s decision reviewable for an erroneous exercise of discretion.³ *See McGuire v. McGuire*, 2003 WI App 44, ¶26, 260 Wis. 2d 815, 660 N.W.2d 308. We uphold a circuit court’s discretionary decision if the court demonstrated a “reasoned application of the appropriate legal standard to the

² All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

³ C.W.W. does not dispute that the decision whether to appoint a GAL in this case was discretionary.

relevant facts in the case.” See *Tralmer Sales & Serv., Inc. v. Erickson*, 186 Wis. 2d 549, 572-73, 521 N.W.2d 182 (Ct. App. 1994) (quoted source omitted).

A circuit court may issue a child abuse injunction if the court “finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim.” WIS. STAT. § 813.122(5)(a)3. We uphold the circuit court’s findings of fact unless they are clearly erroneous. *Kristi L.M. v. Dennis E.M.*, 2007 WI 85, ¶22, 302 Wis. 2d 185, 734 N.W.2d 375. We then review de novo whether those facts established reasonable grounds to grant the injunction. *Id.*

C.W.W. contends that the circuit court erroneously exercised its discretion by denying C.W.W.’s request for the court to appoint a guardian ad litem (GAL) for the children. He contends that a guardian ad litem would have assisted the court in determining the best interests of the children. We are not persuaded. The circuit court explained why it did not believe that a guardian ad litem was necessary based on the facts of this case. It identified the criminal complaint charging C.W.W. with sexual assault of the older child in the house as the factual basis for it to move forward on the injunction petitions, and determined that the facts it needed to assess did not necessitate appointment of a guardian ad litem for the younger children. We discern no basis to disturb the circuit court’s exercise of discretion. See *Tralmer Sales & Serv., Inc.*, 186 Wis. 2d at 572-73.

C.W.W. also contends that the evidence at the injunction hearing did not support the injunctions. He argues that there was no evidence that, “*based upon prior conduct of the child victim and the respondent,*” C.W.W. may engage in abuse of the younger children. See WIS. STAT. § 813.122(5)(a)3. (emphasis added). He points out that there was no evidence that he had

any prior sexual contact with the younger children. He also points out that a social worker with the Wood County Human Services Department testified that there were no concerns that C.W.W. abused or would abuse the younger children. C.W.W. argues that the circuit court could not issue the injunctions absent evidence of prior conduct *between C.W.W. and the younger children* establishing that C.W.W. may engage in abuse of the children. We disagree.

WISCONSIN STAT. § 813.122(5)(a)3. authorizes a circuit court to issue a child abuse injunction if the evidence establishes “reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim.” We are not persuaded that the statute requires evidence of prior conduct *between the child victim and the respondent* to support a child abuse injunction. Rather, there was sufficient evidence of C.W.W.’s prior conduct to establish reasonable grounds to believe that C.W.W. may engage in abuse of the younger children.

The evidence at the injunction hearing included the pending criminal charge against C.W.W. for sexual assault of the older child in the home. Additionally, the children’s mother testified that she did not believe the older child’s allegation that provided the basis for the child sexual assault charge. The social worker from the Wood County Human Services Department, however, testified that the older child’s sexual assault allegation was substantiated. The court found that there was a substantiated allegation of sexual abuse by C.W.W. against the older child, that the younger children were at risk of sexual abuse by C.W.W., and that the mother was not protecting the children from C.W.W. We will not overturn the circuit court’s findings of credibility as to the witness testimony. *See State v. Oswald*, 2000 WI App 3, ¶47, 232 Wis. 2d 103, 606 N.W.2d 238. The circuit court’s findings were supported by facts in the record and established reasonable grounds to believe that, based on C.W.W.’s prior conduct, C.W.W. may

engage in abuse of the younger children. Accordingly, the circuit court properly exercised its discretion by granting the injunctions. *See Kristi L.M.*, 302 Wis. 2d 185, ¶¶21-22.

Therefore,

IT IS ORDERED that the circuit court's orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals