**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

October 14, 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. 98-3441**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT IV**

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**BRIDGET C. AND CHELSEA C.,**

**PETITIONERS-RESPONDENTS,**

**V.**

**STEPHEN J.C.,**

**RESPONDENT-APPELLANT,**

**LAFAYETTE COUNTY, AND LAFAYETTE COUNTY HUMAN SERVICES,**

**INTERVENORS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Lafayette County: WILLIAM D. JOHNSTON, Judge. *Affirmed.*

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

¶1 EICH, J. Stephen J.C. appeals from a child-abuse restraining order, issued on the petition of his minor daughters, Bridget and Chelsea, aged thirteen and nine, respectively, enjoining him from having any contact with them for a period of two years, unless they wish to have such contact and it is permitted by their therapist. The orders were issued based on the children's petition, filed by their guardian ad litem, alleging physical and emotional abuse.

¶2 We see Stephen J.C.'s brief as attempting to raise the following arguments: (1) the trial court lacked jurisdiction because the children were removed from Illinois to Wisconsin in violation of "the Parental Kidnapping Prevention Act, … the Hague Convention on the Civil Aspects of International Parental Child Abductions, [and] the Uniform Child Custody Jurisdiction Act …"; (2) alternatively, the court should have exercised its discretion to "decline jurisdiction" in the case for various reasons; (3) the trial court's finding of abuse is not supported by the evidence; (4) the court erred in holding an "open hearing" on the children's petition; (5) the trial court's failure to recuse itself from the case "compromised" Stephen J.C.'s "constitutional[ly] protected rights to the custody and care of his children, due process, and a fair trial …"; and (6) § 813.122, STATS., the child abuse injunction statute, is unconstitutional. We reject each of his arguments and affirm the order.

## I. Jurisdiction

¶3 Stephen J.C.'s jurisdictional arguments are premised on his claim that Bridget and Chelsea were being taken from his home in Illinois to the home of their aunt, Susan McD., in Wisconsin, without his permission (although it appears that he, himself, was living in Wisconsin at the time). He claims the children were "abduct[ed]" in violation of his "due process rights, supremacy clause rights and

his … fundamental constitutional rights inherent in the parent/child relationship," as well as in violation of various federal and state kidnapping and other laws. As a factual basis for his claims, he asserts no more than that Susan McD. brought the children to Wisconsin without his or a court's permission, and without "hir[ing] an Illinois attorney to determine whether or not she had the legal right to remove the children …." He also states in general terms—and without citation to the record[1]—that Wisconsin is not the children's "home state" and that they had not had significant contact with Susan McD. for several years prior to coming with her to Wisconsin.

¶4 Unfortunately, many of the facts underlying these arguments and assertions are difficult to ascertain from the parties' briefs. We infer from the briefs that the children's mother is deceased and that they had been living with their father, Stephen J.C., and his current wife, Lynn C. (also referred to as Linda), in Deerfield, Illinois, until Lynn began divorce proceedings and Stephen moved to Cedarburg, Wisconsin, sometime in December 1997. As indicated, the children were brought to Susan McD.'s home in Wisconsin on June 10, 1998.

¶5 The child abuse petition was filed in June 1998 based on allegations that Stephen J.C. had engaged in repeated physical and emotional abuse of the two children while they were living together in Illinois, and that, on the advice of the children's therapist, Lynn contacted Susan McD., asking her to take the children to her home for their protection. In addition to challenging the petition on its merits, Stephen J.C. argued that the court lacked jurisdiction in the matter, claiming that

[1] We have frequently held that, as a general rule, we do not consider arguments based on factual assertions that are unsupported by references to the record. *See*, *e.g.*, ***Dieck v. Antigo Sch. Dist.***, 157 Wis.2d 134, 148 n.9, 458 N.W.2d 565, 571 (Ct. App. 1990).

he was an Illinois resident and that the children had been illegally abducted or kidnapped from their Illinois home. The trial court, denying Stephen J.C.'s jurisdictional motions, made the following findings of fact—which do not appear to be challenged on this appeal.

> 4. In this Wisconsin action, Mr. C. filed motions … and signed affidavits … admitting he was domiciled in … Wisconsin.
>
> 5. Mr. C. owns a business in … Wisconsin; has an apartment in … Wisconsin; had a Wisconsin driver's license…; [and] registered and licensed … automobiles in Wisconsin ….
>
> ….
>
> 7. Mr. C. held himself out to be a Wisconsin resident to the authorities both in Illinois and Wisconsin until he received notice of this action. Then he began reversing, on paper, the actions he had taken to become a Wisconsin resident ….
>
> ….
>
> 12. Mr. C.'s statement that he is an Illinois resident because he lives in Illinois with is parents on weekends is not credible and is made solely for the purpose of evading the jurisdiction of this court.
>
> ….
>
> 14. The children are not the victims of a parental kidnapping in defiance of a court order. No court order of any kind existed at the time the children asked to be taken to Wisconsin.
>
> 15. The children initiated their removal to Wisconsin on June 10, 1988, to seek protection from their dead mother's sister, with the consent of Linda C. who had temporary custody because of an Order of Protection….

¶6 The court's conclusions of law with respect to jurisdiction were, among other things: that Stephen J.C. was a Wisconsin resident at the commencement of the proceedings and had received full notice and opportunity to be heard; that both Stephen J.C. and the children have significant contacts with Wisconsin; that the children were not kidnapped or abducted to Wisconsin, nor

brought here in violation of an existing custody order; and that Wisconsin is the "most convenient and appropriate forum for all concerned."

¶7 We agree with the children's guardian ad litem and the intervenors, the Lafayette County Department of Human Services, that the children's relocation to Wisconsin was not a "kidnapping" under either state or federal law, since it was not accomplished with force, or even without the children's consent; but rather was done at their request to escape a highly abusive situation.[2] The testimony of the children, and of Susan McD., confirmed that they had asked to be brought to Wisconsin, and the trial court so found in its decision. Based on the children's and Susan McD.'s testimony, that finding is not clearly erroneous. *See* § 805.17(2), STATS.; ***Mentzel v. City of Oshkosh***, 146 Wis.2d 804, 808, 432 N.W.2d 609, 611 (Ct. App. 1988).

¶8 Stephen J.C. also sets forth the following assertions—also unsubstantiated by references to the record[3]—as reasons for overturning the trial court's jurisdictional findings and conclusions: (1) the children have a "dubious connection" to Wisconsin "because of the activities of the mother prior to her death, and with regard to the horrible accident in which she died, in which she drove drunk with her two children in the car"; (2) "If Susan McD. felt the children were in some danger, [she] could and should have contacted a court in the State of Illinois [or] hired an Illinois attorney"; (3) there is no evidence the children "have been subjected to or threatened with mistreatment or abuse during the past year, or that they would be subjected [to] or threatened with mistreatment or abuse by their

[2] *See* our discussion of the evidence of child abuse in Section II of this opinion.

[3] *See supra* note 1.

father in the future"; and (4) the children "could have sought an injunction … in the State of Illinois [and] Susan McD. could have sought an Illinois court order allowing her to remove the children from … Illinois." For these reasons, Stephen J.C. concludes, without further elucidation—and without citation to any legal authority[4]—that "The State of Illinois has jurisdiction under the grounds listed above."

¶9 Such broad-based, unfocused assertions present no real challenge to the trial court's jurisdictional findings and conclusions. Nor does Stephen J.C.'s argument that the trial court "should have declined to exercise jurisdiction" because "[t]his case is ultimately one of child abduction …." Again, Stephen J.C. offers no evidence or argument refuting the trial court's findings and conclusions to the opposite effect, and he has failed to persuade us that the court erred in assuming jurisdiction over the proceedings.

## II. Sufficiency of the Evidence of Child Abuse

¶10 Stephen J.C. argues that his actions did not constitute abuse within the meaning of the applicable statutes. Sections 813.122(1)(a), and 48.02(1), STATS., define "abuse" as either actual or threatened "physical injury inflicted on a child by other than accidental means." Another statute, § 48.02(14g), defines "physical injury" as "includ[ing] but not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm …."[5]

[4] We have often said that we do not consider arguments that are unexplained or undeveloped, or unsupported by citations to authority or references to the record. ***M.C.I., Inc. v. Elbin***, 146 Wis.2d 239, 244-45, 430 N.W.2d 366, 369 (Ct. App. 1988); ***Lechner v. Scharrer***, 145 Wis.2d 667, 676, 429 N.W.2d 491, 495 (Ct. App. 1988).

[5] The latter phrase is defined in § 939.22(14), STATS., as "bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a (continued)

¶11 Stephen J.C. doesn't argue the facts other than to state that "[t]here were no documented incidents that meet [the statutory] standard"; and he says he has a right to "harsh[ly] ... discipline" his children. As is the case with arguments that are unsupported by citations to legal authority, or to the record, *see supra* notes 1 and 4, we do not consider arguments that are unexplained and undeveloped. ***M.C.I., Inc. v. Elbin***, 146 Wis.2d 239, 244-45, 430 N.W.2d 366, 369 (Ct. App. 1988).

¶12 Beyond that, the record is replete with evidence of abuse within the meaning of the applicable statutes. Bridget testified that Stephen J.C. hit, grabbed, and kicked her repeatedly, including hitting her in the face with an open hand and closed fist. According to Bridget, her father would call her names like "whore and slut … tramp [and] bitch," and, on one occasion, hit her on her back and buttocks with an open hand and closed fist for fifteen minutes, causing bruises up and down her back. On another occasion he hit her on the shoulder and back and "boxed her ears" between twenty and twenty-five times, and then pushed her to the floor, where he kicked her repeatedly. He jabbed her hand with a fork at the dinner table, threatening to push it through her hand if she didn't sit up straight. He also threatened to throw her out of a second-floor window. According to Bridget, these events would occur as often as three to four times a week. Chelsea testified that, among other things, Stephen J.C. hit her with a belt and a rolling pin, hit her in the face with a shoe, threw a wooden chest at her, and held her against a second-story windowsill, threatening to throw her out. On another occasion, according to Bridget, Stephen J.C. hit Chelsea in the face "50 times," resulting in "bruises so bad that she

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permanent or protracted loss of impairment of the function of any bodily member or organ or other serious bodily injury."

was unable to go to school" and, on still another occasion, pulled out whole "clumps" of her hair.

¶13 On this evidence, the trial court found as follows:

> 27. The petitioners were regularly and frequently slapped, struck and beat[en] by the respondent using his hands, his fist and implements, including spoons, belts, shoes and a rolling pin.
>
> 28. The children have been regularly threatened with bodily harm by the respondent ….
>
> 29. Both children have lived since birth in constant fear of bodily harm from the respondent.
>
> 30. Chelsea and Bridget were bruised by the respondent on numerous occasions [and] once Chelsea was so bruised that her father, in an attempt to conceal his abuse, prevented her from attending school….
>
> 31. The respondent emotionally and mentally abuses the children by outbursts of threatening and escalating behavior, yelling, swearing, demeaning, humiliating, blaming and threatening them.
>
> ….
>
> 33. The respondent habitually in anger grabbed the children leaving marks ... on their arms, shook them and threw objects at them.

On these facts, the court concluded that "[t]here are reasonable grounds to believe based on overwhelming evidence that the respondent has engaged in physical and emotional abuse of the children in the past and based on prior conduct may in the future engage in physical and emotional abuse of the children who are the petitioners in this action."

¶14 The evidence was indeed overwhelming and Stephen J.C. has wholly failed to counter the respondents' arguments and the trial court's findings and conclusions with respect to the children's allegations of abuse.

## III. The Conduct of the Hearing

¶15 Stephen J.C. next states that the hearing was unfair to him because it wasn't closed, and several friends and relatives of the children's deceased mother were present in the courtroom, causing him to "perceive" that they all "want[ed] him convicted no matter what," and to make the proceedings appear to him to be "highly biased appearing [sic] and emotionally charged hearings, which they did not have to be."

¶16 Aside from Susan McD., none of these people (who Stephen J.C. doesn't identify) appears to have testified. Stephen J.C. makes no legal argument based on, or in support, of his personal assertions, and we need not consider them further. *See supra* note 4.

## IV. The Trial Court's Failure to Recuse Itself

¶17 Stephen J.C. argues that the trial judge should have recused himself from the proceedings because, while an attorney some seventeen years earlier, he had briefly represented his (Stephen J.C.'s) first wife (the children's mother was his second wife, and Lynn C. his third) in her divorce action against him. The judge acknowledged the representation, but stated that he remembered nothing of the case, other than it did not involve any custody or other issues affecting children.[6] Stephen J.C. asserts—again without any reference to the record—that the judge was "privy to highly prejudicial allegations from [the first] Mrs. C," and he says that even though the judge didn't remember the case, "[his] prior knowledge of these facts may be prejudicial to [Stephen J.C.'s] case." Here, too,

[6] These divorce proceedings occurred well before Stephen J.C. and the children's mother were married, and long before their birth.

the argument is unfocused and undeveloped. *See supra* note 4. It does not purport to be based on anything other than Stephen J.C.'s "feelings, perceptions and concerns,"[7] and we have already given it more consideration than it merits.

## V. Constitutionality of § 813.122, STATS.

¶18 Stephen J.C. argues that § 813.122, STATS., is unconstitutionally vague and overbroad. His brief, however, does nothing more than set forth the general rules on overbreadth and vagueness. It makes no attempt to apply the rules to the challenged statute. Indeed, the brief never even refers to the specific statutory language Stephen J.C. appears to claim is vague and overbroad. The "argument," in its entirety, is as follows:

> The court found CHIPS based on res judicata and issue preclusion at the end of the many day injunction trial to the bench, in which the court put an injunction in place for two years, during which Dr. C.[8] was to have no contact with his children. The court stated that the injunction controlled over the CHIPS.
>
> Section 813.222, Wis. Stats., does not provide control over CHIPS nor does Chapter 48 provide that an injunction controlled over CHIPS. Thus, the court has erred and/or Section 813.122, Wis. Stats., is unconstitutionally vague and overbroad because it does not address the issue of CHIPS, and yet carrying out such a provision as parental non-contact completely defeats the CHIPS goal of family unification, and absolutely destroys the parent's due process attempt to meet the CHIPS requirement for family reunification.

[7] The "argument" is really no more than counsel's unsubstantiated assertions. It is, in essence—and in the words of the brief—no more than this: "Bluntly, Dr. C. perceived the deck as stacked against him, by the Judge, by the presence of his late wife's family, and because they are a strong presence in Lafayette County awn [sic] he is an outsider (although he did practice dentistry in southern Wisconsin many years ago … [and] it remains possible that a case that an attorney does not directly recall still made a mental impression that one carries unconsciously in one's mind." We see no grounds for relief in these musings.

[8] Stephen J.C. is, apparently, a practicing dentist.

Here, too, we consider the argument insufficiently developed to warrant further consideration. A person challenging the constitutionality of a statute bears a "heavy burden" of persuasion; he or she must satisfy us of the statute's invalidity beyond a reasonable doubt. ***Employers Health Ins. Co. v. Tesmer***, 161 Wis.2d 733, 737, 469 N.W.2d 203, 205 (Ct. App. 1991). Stephen J.C. has not met that burden.[9]

*By the Court.*—Order affirmed.

Not recommended for publication in the official reports.

[9] Section 813.122, STATS., contains twelve lengthy subsections and occupies more than two full pages of Volume 4 of the 1997-98 Wisconsin Statutes. It is not this court's task to sift through those pages and subsections in an attempt to ascertain the nature of Stephen J.C.'s challenge.