

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 23, 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. 99-1774

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN THE INTEREST OF CAMERON R.P.:

CAMERON R.P.,

PETITIONER-APPELLANT,

v.

JENNIFER P.,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Burnett County:
JAMES H. TAYLOR, Judge. *Affirmed.*

¶1 CANE, C.J. The guardian ad litem for Cameron R.P., appeals from the circuit court's order denying his request for an injunction to protect Cameron from unsupervised visitation with his mother. The guardian contends the court erred by concluding that the evidence failed to establish reasonable grounds

that Cameron, d.o.b. 1/8/98, would be in danger if his mother's visitation was unsupervised. He therefore argues that the circuit court improperly exercised its discretion to deny the injunction. Because the circuit court may in its discretion deny a request for an injunction even if reasonable grounds for the injunction are proven, this court affirms the order.

¶2 Some background is helpful to understand these proceedings. The state had charged Cameron's mother with child abuse homicide involving Cameron's older brother, who had died from internal injuries at the age of two. After a preliminary examination hearing, the mother was bound over for trial on the homicide charge. However, at a hearing two months later, the court granted the state's motion to dismiss the charge. At that hearing, defense counsel for the mother indicated that in relation to her son's death, she had passed a polygraph examination conducted by an examiner who previously worked for the State Crime Lab and was retained by prosecution and defense in numerous cases.

¶3 Meanwhile, as part of a pending divorce action and after his brother's death, the court allowed the mother supervised visitation with Cameron. At the time of the injunction hearing, the order in the divorce action providing for the supervised visitation was still in effect. It is important to note that the same judge presided over the divorce case, the criminal case against the mother, the juvenile CHIPS relating to Cameron and the injunction hearing. Consequently, the judge had full knowledge as to what was happening in each of the other proceedings.

¶4 At the injunction hearing, the court admitted the preliminary hearing transcript relating to the child abuse homicide charge. At the preliminary hearing, there had been a dispute as to the cause of the infant's bruising and whether a

parent could easily diagnose abdominal injuries. The evidence also suggested that if the mother did not commit the abuse, her live-in boyfriend might have done so. In addition, two witnesses testified at the injunction hearing to the effect that they thought, based on the mother's comments to them, that she was contemplating a joint suicide with Cameron. However, both witnesses admitted that they had never observed the mother harm either child.

¶5 At the conclusion of the guardian's evidence, the court granted the mother's motion to dismiss. It reasoned that probable cause at a preliminary examination is extremely slight and noted that the evidence for any child abuse pointed to either the mother or her boyfriend. However, even after hearing the testimony of the two additional witnesses, the court concluded that the evidence was not convincing to show the mother was a danger to Cameron such that an injunction was necessary.

¶6 Whether to grant the injunction under § 813.122, STATS., is addressed to the discretion of the judge who hears the petition. *See In re H.Q.*, 152 Wis.2d 701, 708, 449 N.W.2d 75, 78 (Ct. App. 1989). However, the judge may not grant the injunction unless the judge first finds reasonable grounds to believe that the respondent has engaged in or may engage in abuse of the child. *See id.* Whether such reasonable grounds exist is a question of mixed fact and law. *See id.* On appeal, this court will not set aside the factual portion of the judge's answer to the question unless it is clearly erroneous. However, the judge's legal conclusions based on the established facts are reviewed independently. *See id.*

¶7 Here, after reviewing the evidence at the preliminary hearing and listening to the additional witnesses, the judge found that the mother was not a

danger to the child. Although one might dispute that finding, this court cannot as a matter of law say that his conclusion to deny the injunction was an unreasonable exercise of discretion. Even if there were sufficient grounds to grant the injunction, the decision of whether to grant the injunction remained within the judge's discretion. At the preliminary hearing, the evidence was disputed as to whether the mother had committed any crime. The court was also aware from the criminal proceeding that the state had moved to dismiss the charge after the mother had passed a polygraph examination where she denied any child abuse. Additionally, it is undisputed that at the time of the injunction hearing, the custody order in the divorce case provided for supervised visitation of Cameron.¹ With this information, this court cannot say that the judge erroneously exercised his discretion by denying the injunction.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

¹ This court notes from the record that an earlier request for a similar injunction was denied in the Eau Claire County court when the judge dismissed the action because he concluded that the action belonged in the divorce proceeding.

