COURT OF APPEALS
DECISION
DATED AND FILED

April 19, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1004-CR **Cir. Ct. No. 2013CF44**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DONALD R. WESO,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Shawano County: JAMES R. HABECK, Judge. *Affirmed*.

¶1 HRUZ, J.[1] Donald Weso appeals a judgment of conviction for several domestic abuse offenses and an order denying his postconviction motion.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

He argues the circuit court erroneously denied his motion seeking to vacate all domestic abuse surcharges the court imposed under WIS. STAT. § 973.055. In particular, Weso argues he did not "reside" with the victim such that any surcharge could be imposed against him. *See* § 973.055(1)(a)2. We conclude Weso "resided" with the victim at the time of the offenses within the meaning of § 973.055(1)(a)2. because he stayed at the victim's residence between five and six nights per week for a number of months, kept clothes at the residence that he wore daily and that the victim laundered, and consumed meals at the residence. Accordingly, we affirm.

BACKGROUND

¶2 On February 6, 2013, at approximately 1:52 a.m., Shawano police officer Jeff Lenzner was dispatched to a local bar based on a report of a possible domestic disturbance. The complainant, R. D., told Lenzner she and Weso had been dating since June 2012 and living together since October 2012. R. D. stated Weso became upset with her because she was talking to other men at the bar. Weso struck R. D. in the face with a closed fist while they were standing on the sidewalk outside the bar. Weso was apprehended and charged with misdemeanor battery as domestic abuse, contrary to WIS. STAT. § 940.19(1); possession of cocaine; resisting an officer; and two counts of disorderly conduct as domestic abuse, contrary to WIS. STAT. § 947.01(1). The complaint asserted the domestic-abuse-related charges were each subject to the $100 domestic abuse surcharge under WIS. STAT. § 973.055(1).

¶3 Weso pleaded guilty to the domestic-abuse-related charges and no contest to the other charges.[2] The circuit court accepted Weso's pleas and proceeded immediately to sentencing. The parties jointly recommended three years' probation, which the court ultimately imposed. During sentencing, the defense acknowledged Weso and the victim "used to reside together, and as a result, [Weso] lost his residence." Weso personally acknowledged he "probably will be going to have to end up having to go to [domestic violence] classes for this." The defense, arguing against jail time as a condition of probation, stated Weso understood "he will undergo domestic assessments and perhaps follow up with counseling related to that, so he is willing to cooperate with his agent in that regard."

¶4 Weso filed a WIS. STAT. RULE 809.30(2)(h) postconviction motion seeking an order vacating the domestic abuse surcharges.[3] He argued none of the circumstances giving rise to such a surcharge applied; namely, he was not married to R. D., did not have a child with R. D., and did not reside or formerly reside with R. D. *See* WIS. STAT. § 973.055(1)(a)2. Weso acknowledged R. D. told officers she was living with Weso, and he admitted he was dating R. D. at the time of the offenses and had stayed at her residence. However, Weso, citing various definitions of the term "residence" throughout the Wisconsin Statutes, argued the

[2] The general rule is that a guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. ***State v. Riekkoff***, 112 Wis. 2d 119, 123, 332 N.W.2d 744 (1983). However, the guilty-plea-waiver rule is a rule of administration and does not deprive the appellate court of jurisdiction over the appeal. ***Id.*** at 123-24. In this case, we elect to reach the merits despite the waiver rule because the matter was fully briefed by the parties, the circuit court addressed the merits, and there is a notable lack of case law regarding the meaning of the term "resides" in WIS. STAT. § 973.055(1)(a)2.

[3] Weso also moved to vacate a DNA analysis surcharge, which motion the circuit court granted.

surcharge could be imposed only when the facts demonstrated "an intent to remain in a fixed place of … habitation, or a regular place of abode." In Weso's view, the facts of his case did not satisfy that definition.

¶5 Weso, R. D., and Lenzner testified at a hearing on Weso's motion. At the conclusion of the hearing, the circuit court determined the witness testimony was "not exactly congruent, but it certainly [was not] highly contrasting either." The court found R. D. credible, noting her demeanor on the stand and the fact that her testimony was consistent with her statements to police "at the time when it was all fresh in her mind." The court determined Weso was spending "five or six nights a week ordinarily" at R. D.'s residence, he had clothes there that R. D. laundered for him, and he ate meals there as well. The court concluded Weso and R. D. "had clearly a domestic relationship that extended for months. This was not something temporary or a very occasional visit." Accordingly, the court determined the domestic abuse surcharge was validly imposed. Weso appeals.

DISCUSSION

¶6 The imposition of a domestic abuse surcharge is governed by WIS. STAT. § 973.055.[4] That section provides, in relevant part:

> (1) If a court imposes a sentence on an adult person or places an adult person on probation, regardless of whether any fine is imposed, the court shall impose a domestic abuse surcharge under ch. 814 of $100 for each offense if:

[4] Money collected from the imposition of domestic abuse surcharges is used to fund grants to organizations that provide domestic abuse services such as shelter, advocacy and counseling, telephone services, and community education. *See* WIS. STAT. §§ 973.055(3) and 49.165(2).

> (a)1. The court convicts the person of a violation of … [WIS. STAT. §] 940.19 … [or WIS. STAT. §] 947.01(1) …; and
>
> 2. The court finds that the conduct constituting the violation under subd. 1. involved an act by the adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided or against an adult with whom the adult person has created a child[.]

Subsec. 973.055(1). There is no dispute in this case that Weso was convicted of offenses to which the domestic abuse surcharge can apply. It is also undisputed that Weso has never been married to R. D. and does not have a child with R. D.

¶7 Thus, the domestic abuse surcharge is valid in this case only if Weso "resides or formerly resided" with R. D. at the time of the offenses. This determination requires that we interpret WIS. STAT. § 973.055(1)(a)2. and apply it to the facts as found by the circuit court. The interpretation of a statute and its application to found facts are questions of law that this court decides de novo. ***Barron Elec. Coop. v. Public Serv. Comm'n***, 212 Wis. 2d 752, 760, 569 N.W.2d 726 (Ct. App. 1997). However, we will not reverse a circuit court's factual finding unless it is clearly erroneous. ***Bray v. Gateway Ins. Co.***, 2010 WI App 22, ¶11, 323 Wis. 2d 421, 779 N.W.2d 695.

¶8 Statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110 (quoting ***Seider v. O'Connell***, 2000 WI 76, ¶43, 236 Wis. 2d 211, 612 N.W.2d 659). We generally give statutory language its common, ordinary and accepted meaning. ***Id.*** In addition, we will interpret statutory language in the context in which it is used; not in isolation but as part of a whole; in relation to the

language of surrounding or closely related statutes; and reasonably, to avoid absurd or unreasonable results. ***Id.***, ¶46.

¶9 Weso offers several print and Internet dictionary definitions of "reside" that he asserts collectively "suggest a permanency to 'reside' that is lacking in a dating relationship like that of [R. D.] and Weso." "The common and approved usage of a word in a statute may be ascertained by reference to a recognized dictionary." ***State v. Woods***, 117 Wis. 2d 701, 735, 345 N.W.2d 457 (1984). According to WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1931 (unabr. 1993), the term "reside" means "to dwell permanently or continuously," "have a settled abode for a time," or "have one's residence or domicile." Accordingly, Weso is correct that WIS. STAT. § 973.055(1)(a)2. includes habitation arrangements between the perpetrator and the victim that are intended to be permanent. However, the term "resides" is not limited to such "permanent" situations, as a person also "resides" where he or she dwells continuously or has a "settled abode for a time." Given this common and approved usage, we conclude certain arrangements that are intended to be temporary also fall within the statute's ambit. *See* 79 Wis. Op. Att'y Gen. 109 (1990) (concluding university residence hall roommates "reside" with one another within the meaning of the general domestic abuse statute, WIS. STAT. § 968.075(1)(a)).

¶10 Weso cites numerous definitions of the term "residence" located elsewhere in the Wisconsin Statutes in support of his argument, including in statutes relating to elections, *see* WIS. STAT. § 6.10(1), (2); to social services programs, *see* WIS. STAT. §§ 46.27(1)(d) and 49.001(6); and to health insurance premium subsidies, *see* WIS. STAT. § 252.16(1)(e). Weso also relies on the legislative findings contained within the 1979 legislation that established domestic

abuse grants and the domestic abuse surcharge. He asserts this legislative history, coupled with the definitions of "residence" contained elsewhere in Wisconsin law, compels the conclusion "that the domestic abuse surcharge is reserved for those situations where individuals reside together in a spousal-type of relationship in an arrangement intended to be permanent."

¶11 We reject this interpretation as a matter of plain-language statutory construction. There is no indication in the plain language of WIS. STAT. § 973.055(1)(a)2. that the legislature intended to limit application of the statute to individuals in a spousal-type relationship. Indeed, Weso's proposed interpretation contravenes the rule that we interpret statutes reasonably, to avoid absurd results. In Weso's view, a domestic abuse crime involving a dating couple living together for several months would be treated differently for purposes of § 973.055 than the same crime involving a married couple living together for the same length of time. The focus of the statute is on the individuals' living arrangements, not solely the length of their relationship or the degree of their commitment to one another.[5] Marriage is a separate basis for the imposition of the domestic abuse surcharge. *See* § 973.055(1)(a)2.

¶12 The legislative findings in the session law enacting WIS. STAT. § 973.055 support our interpretation as encompassing all domestic residential

[5] The Wisconsin Attorney General's office has also rejected Weso's construction in the context of the general domestic abuse statute, WIS. STAT. § 968.075. *See* 79 Wis. Op. Att'y Gen. 109 (1990). The Attorney General's office concluded the statute "is aimed at providing equal protection and enforcement of the laws to those involved in certain relationships, either familial or household, irrespective of the permanency or duration of the relationship." ***Id.*** at 114. We agree with the view that WIS. STAT. § 973.055, like § 968.075, "does not turn on whether the parties are living in a permanent legal domicile but rather whether there exists a familial or household relationship with all the attendant stresses." 79 Wis. Op. Att'y Gen. at 114.

situations.[6] The legislature expressed concern for all domestic abuse, not just abuse between individuals in long-term relationships similar to spouses, labeling it a "serious social problem which requires a comprehensive, informed and determined response by a concerned society." *See* 1979 Wis. Laws, ch. 111, § 1. Based upon the plain language of the statute, coupled with support from the legislative findings, we reject Weso's suggestion that the term "resides" in § 973.055 requires that either the victim or the perpetrator have "legal domicile" at the place where they reside together. Because WIS. STAT. § 973.055 was enacted to deal with the specific problem of domestic violence, we also do not find the statutes dealing with other subjects—and which also define a slightly different term, "residence"—informative as to the proper construction of the term "resides" in § 973.055.

¶13 We do acknowledge Weso's point that WIS. STAT. § 973.055's use of the term "reside" contemplates more than an occasional overnight stay. "Reside," while somewhat formal, "may be the preferred term for expressing the idea that a person keeps or returns to a particular dwelling place as his [or her] fixed, settled, or legal abode." *Reside*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1931 (unabr. 1993). "Live," by contrast, is the "more general word for indicating that one has one's home in a place, often with special reference especially to hours away from work." ***Id.***

[6] Regardless whether one believes such explicit legislative findings constitute "legislative history," *see* ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶¶65, 69, 271 Wis. 2d 633, 681 N.W.2d 110 (Abrahamson, C.J., concurring) (noting the issue whether nonstatutory provisions having the force of law, such as those appearing in the session laws and setting forth statements of legislative findings, constitute "legislative history" materials that may be consulted prior to a finding of ambiguity), resort to the session law in this case is appropriate either way, *see* ***id.***, ¶¶48, 51 (holding legislative history may be consulted to "confirm or verify a plain-meaning interpretation").

Thus, at least theoretically, it seems possible that one could "live" in a place without also being deemed to "reside" there for purposes of § 973.055. Furthermore, it can be the case—and perhaps often is—that, in a dating relationship, individuals will stay overnight at one or both of the couple's residences with a degree of infrequency such that they do not "reside" together, either in a colloquial sense or for purposes of WIS. STAT. § 973.055(1)(a)2.

¶14 This case, however, does not require that we fully explore the nature and precise placement of such distinctions. Here, the undisputed testimony at the motion hearing established that Weso and R. D. had been dating since June 2012. R. D., whose testimony the circuit court found credible, testified that Weso had been residing with her since October 2012, between three and four months before the incident at issue. Weso regularly stayed overnight at her residence, approximately five or six nights per week. Weso had two laundry baskets of clothes that he kept there. These were "[c]lothes that [Weso] would wear every day," which R. D. would launder and fold for him. The circuit court reasonably inferred from the testimony that Weso was also having meals at R. D.'s residence. Although Weso testified he lived at another address, that location was, in fact, his sister's residence, and he merely had a bedroom there. More importantly, based on R. D.'s uncontroverted testimony, Weso was only spending, at most, one or two nights a week at his sister's residence. Weso estimated that he and R. D. stayed together overnight at his sister's residence about three times over the course of their entire relationship.

¶15 None of the circuit court's findings in this case were clearly erroneous based on the testimony presented at the motion hearing. We conclude the facts as found by the circuit court satisfy the definition of "resides" in WIS. STAT. § 973.055. Of particular import are the findings that Weso stayed overnight

at R. D.'s residence approximately five or six nights per week for a period of three or four months. Indeed, Weso never truly comes to grip with these particular facts, dismissively characterizing them as Weso "stay[ing] with R. D. frequently while they were dating." Our conclusion is buttressed by the fact that Weso's counsel acknowledged that Weso and the victim were residing together at the time of the offenses, and that Weso had lost his residence with R. D. as a result of the battery. The circuit court properly denied Weso's motion to vacate the domestic abuse surcharge.

By the Court.—Judgment and order affirmed.

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