

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 2002

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-2579
STATE OF WISCONSIN**

Cir. Ct. No. 01-CV-97

**IN COURT OF APPEALS
DISTRICT IV**

NANCI BRISBANE,

PETITIONER-RESPONDENT,

V.

PETER J. VALLECILLO,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Richland County:
EDWARD E. LEINEWEBER, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Peter Vallecillo challenges the circuit court's order of a domestic abuse injunction against him. Vallecillo argues that there was insufficient evidence to find reasonable grounds to believe that Vallecillo might engage in domestic abuse of Nanci Brisbane, the petitioner. Because the resolution of this case rested upon a credibility determination and such

determinations are within the circuit court’s discretion, and because the “reasonable grounds” burden of proof under WIS. STAT. § 813.12 (1999-2000)¹ has been satisfied, we affirm.

¶2 Vallecillo and Brisbane were married for seventeen years and have a son together. The parties divorced in Portland, Oregon, in 1998. After the divorce, Brisbane moved to Wisconsin, followed by Vallecillo in 1999. Brisbane petitioned for a domestic abuse injunction on July 25, 2001, alleging that she was in imminent danger of physical harm. In support of that allegation, Brisbane related two incidents. First, she claimed Vallecillo had thrown two twenty-pound planters at her. Second, she claimed that Vallecillo had threatened her by positioning his vehicle in front of hers and gunning the motor. Vallecillo denied both incidents. Furthermore, Brisbane claimed Vallecillo was convicted of domestic violence in Oregon and that she obtained a two-year domestic abuse injunction against him there. Vallecillo countered that the charges had been dropped and that he was subject only to a restraining order targeted at preventing him from taking their son back to his native Nicaragua.

¶3 The circuit court granted the injunction. The court noted the burden of proof imposed by the statute—“reasonable grounds”—stating, “I’m not sure I can think of a lower burden of proof in the law.” The court noted that while there had been no record of actual physical abuse, there was the flower pot incident, “which might or might not have been intended to actually strike her.” The court reviewed a letter from Vallecillo to Brisbane, which it found could “be considered,

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

based on the history[,] viewed[] as threatening or intrusive.” The court then noted that “the resolution of the issues pretty much depends on the Court’s determination of the credible evidence [and] veracity of the parties.” The court went on to explain that

[i]n determining credibility, courts look to the demeanor of the witness on the stand, the nature of the testimony itself, how it appears to come forth or not come forth with the Court’s own sense of how things work in the world; and an almost visceral judgment under the circumstances as to what’s really going on.

The court concluded that it was “sufficiently persuaded that Ms. Brisbane has some legitimate fear of Mr. Vallecillo.” It further noted, however, that it was “much less persuaded that there is any substantial reason to fear any harm to [their son] or absconding with [their son].” The circuit court tailored the injunction to incorporate the parties’ visitation agreement so that Vallecillo would not be in violation of the injunction when picking up his son.

¶4 To grant an injunction under WIS. STAT. § 813.12, the circuit court must find “reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.” Section 813.12(4)(a)3. In reviewing the circuit court’s determination, we uphold findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). Furthermore, the circuit court is the final arbiter of witness credibility. *Hughes v. Chrysler Motors Corp.*, 188 Wis. 2d 1, 21, 523 N.W.2d 197 (Ct. App. 1994), *aff’d*, 197 Wis. 2d 973, 542 N.W.2d 148 (1996). Whether the facts found are sufficient to meet a party’s burden of proof, however, is a matter of law we review *de novo*. *Spindler v. Spindler*, 207 Wis. 2d 327, 338, 558 N.W.2d 645 (Ct. App. 1996). Finally, the ultimate decision whether to grant the injunction is within the discretion of the circuit court, as implied by

the use of the word “may” in the statute. WIS. STAT. § 813.12(4)(a) (“judge ... may grant an injunction”); *Kotecki & Radtke, S.C. v. Johnson*, 192 Wis. 2d 429, 447-48, 531 N.W.2d 606 (Ct. App. 1995) (use of “may” in statute implies discretion). Therefore, our review of the circuit court’s decision to grant an injunction is highly deferential. *Tralmer Sales & Serv., Inc. v. Erickson*, 186 Wis. 2d 549, 572, 521 N.W.2d 182 (Ct. App. 1994) (appellate review of discretionary acts is deferential).

¶5 The circuit court’s findings support its decision to grant the injunction against Vallecillo. As noted above, the circuit court’s findings were based, in part, on the credibility of the witnesses. We are in no position to second-guess the circuit court’s observations. The circuit court concluded that “there are reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct [of] the petitioner and the respondent may engage in domestic abuse of the petitioner.” Viewing the evidence in the light most favorable to the court’s factual findings, *see State v. Poellinger*, 153 Wis. 2d 493, 504, 451 N.W.2d 752 (1990), we conclude that the record supports the circuit court’s decision. Therefore, we uphold the injunction granted by the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

