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**DISTRICT IV**

January 31, 2018

To:

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Circuit Court Judge  
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D. J. J.  
R. J. S.

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

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2016AP2500                      In the interest of S.A.J., a person under the age of 18: R.J.S. v.  
D.J.J. (L.C. # 2016CV2834)

Before Lundsten, P.J., Sherman and Blanchard, 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).**

D.J.J. appeals a child abuse injunction ordering him to refrain from abusing his child S.A.J., to avoid S.A.J.'s residence, to avoid contacting S.A.J. unless S.A.J. or the petitioner (S.A.J.'s mother R.J.S.) consents in writing and the court determines that such contact would be in the child's best interest, and to not possess a firearm—all for a period of four years. D.J.J. challenges the sufficiency of the evidence to support the injunction, the length of the injunction, and the circuit court's failure to address the issue of visitation rights. After reviewing the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT.

RULE 809.21 (2015-16).<sup>1</sup> We modify the injunction and remand for further proceedings for the reasons discussed below.

R.J.S. sought and the circuit court issued the child abuse injunction under WIS. STAT. § 813.122. That statute authorizes a court to issue an injunction if the court finds reasonable grounds to believe that the respondent has engaged in abuse of the child victim. WIS. STAT. § 813.122(5)(a)3. The definition of “abuse” includes, among other things, “[p]hysical injury inflicted on a child by other than accidental means.” See WIS. STAT. §§ 48.02(1)(a) and 813.122(1)(a).

### *Sufficiency of the Evidence*

D.J.J. appears to argue that the allegations and evidence are insufficient to support an injunction of any length. He seemingly argues that the allegations and evidence are insufficient to support a finding that he had anything to do with injuries to S.A.J., except for the burn incident, which D.J.J. asserts was accidental. Apart from the duration and visitation issues we address below, we conclude that the evidence does support the injunction.

R.J.S. and S.A.J.’s maternal grandmother testified that on three separate occasions S.A.J. had come home from physical placement with D.J.J. with injuries. On the first occasion, S.A.J. came home with “a big goose egg on her forehead and a bruise in the middle of it.” On the second occasion, S.A.J. returned with “swelling and bruising under her right eye” that went along “the whole side of [her] face.” On the third occasion, S.A.J. had a second-degree burn

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

surrounded by first-degree burns on her right wrist, as well as bruising on her back. R.J.S. took S.A.J. to the doctor's office after the first incident, and to the emergency room after each of the other two incidents. Emergency room personnel viewed the burn as a potential nonaccidental trauma and contacted social services, who put a protective plan in place.

Despite testimony from R.J.S. and S.A.J.'s grandmother that S.A.J. had the first two injuries when she was returned to S.A.J.'s grandmother, when questioned by the circuit court D.J.J. testified that he was unaware of how these first two injuries occurred. Moreover, at least with respect to the second injury, D.J.J. affirmatively asserted that the injury did not occur while S.A.J. was placed with him.<sup>2</sup>

The guardian ad litem advised the court that she believed that D.J.J. was injuring his child based upon the emergency room doctor's opinion that the child's injuries were the result of abuse, the fact that the emergency room visits occurred immediately following D.J.J.'s periods of physical placement, and the fact that D.J.J. had not sought medical care for the child after any of the injuries.

We conclude that the above information, and additional testimony that we do not summarize, easily provides reasonable grounds to believe that D.J.J. engaged in abuse of S.A.J. Not only was S.A.J. repeatedly returned with injuries in a short period of time, it is highly incriminating that D.J.J. denied knowledge of plainly visible injuries. Furthermore, the circuit court appropriately gave weight to the guardian ad litem's recommendation because the guardian

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<sup>2</sup> We acknowledge that, as to one of the first two injuries, there was some suggestion that it might have occurred while S.A.J. was at a daycare center. But this testimony was suspect for reasons we do not discuss here, and the circuit court plainly was entitled to find that this possibility was unlikely.

ad litem had reviewed the medical records and was also familiar with the family court proceedings. In sum, there was ample evidence in the record to support a finding that D.J.J. had engaged in abuse of S.A.J.

### *The Duration of the Injunction*

D.J.J. argues that the circuit court failed to comply with WIS. STAT. § 813.122(5)(d)1. when the court ordered that the duration of the injunction would exceed two years and, therefore, erred when the court ordered an injunction with a four-year duration. We agree.

WISCONSIN STAT. § 813.122 limits the available time period for a child abuse injunction to two years “except as provided in par. (dm).” *See* § 813.122(5)(d)1. Under § 813.122(5)(dm)1., if the court finds there is a “substantial risk” that the respondent may commit first- or second-degree intentional homicide or may commit a sexual assault against the child, the court may order that the injunction “is in effect for not more than 5 years.” *See* § 813.122(5)(dm)1. There is no indication that the circuit court considered this requirement.

At the injunction hearing, the circuit court did not comment on the WIS. STAT. § 813.122(5)(dm)1. requirement. In addition, although the injunction order form issued by the court allows a court to make the § 813.122(5)(dm)1. finding by checking a box next to an explanation of the required finding, that box is not checked.

Accordingly, we agree with D.J.J. that the record does not support an initial injunction period of more than two years.

***Parent-Respondent Visitation***

D.J.J. argues that the injunction does not permit any visitation, and that this denial of visitation violates WIS. STAT. § 813.122(5)(b) because the circuit court did not make the necessary finding under that subsection to deny visitation. Again, we agree. Section 813.122(5)(b) provides:

If the respondent is the parent of the child victim, the judge *shall* modify the order under par. (a) to provide the parent reasonable visitation rights, *unless* the judge finds that visitation would endanger the child’s physical, mental or emotional health. The judge may provide that any authorized visitation be supervised.

(Emphasis added.) Although this subsection requires the circuit court to permit “reasonable visitation rights” unless the court makes the requisite finding, the circuit court here did not make any such finding. To the contrary, the court stated that the parties would have to deal with the ramifications of the injunction on physical placement issues in the context of the family law case.

Accordingly, our directions below include a directive that this topic be addressed on remand. It may be that the record as it is already developed would support denying all visitation to D.J.J., but that is a matter the circuit court may address on remand, depending on how the case proceeds.

We pause to note that it is perplexing that the guardian ad litem, presumably experienced in such matters, did not bring this visitation requirement or, for that matter, the above WIS. STAT. § 813.122(5)(dm)1. requirement, to the circuit court’s attention. But it remains true that the requirements are clear and that they must be met, regardless whether they are brought to the circuit court’s attention.

### *Additional Observations*

First, we have in at least one previous order in another case commented about the lack of clarity regarding the interaction of injunctive relief under WIS. STAT. ch. 813 and family court placement orders under WIS. STAT. ch. 767. We have pointed out that it is unclear whether an injunction order under chapter 813 takes priority over a placement order issued by a family court. In the absence of briefing on the topic, we can only suggest that a circuit court, faced with parties that are likely operating under a family court placement order, make inquiries and take the family court proceeding into account in determining the duration and conditions of any injunction.

Second, although a child abuse injunction is limited to two years, absent the WIS. STAT. § 813.122(5)(dm)1. special circumstances, injunctive relief does not necessarily end after two years. The statute expressly provides for extensions. Specifically, if the petitioner “states that an extension is necessary to protect the child victim,” the court “shall” extend the injunction for six months, and “may” extend the injunction for up to two years. *See* § 813.122(5)(d)2. and 3. Further, under these extension provisions, “[n]otice need not be given to the respondent before extending” the injunction. *See* § 813.122(5)(d)4. At the same time, if a court extends an injunction under § 813.122(5)(d)2. or 3., “[t]he clerk of courts shall notify the respondent after the court extends an injunction.” *See* § 813.122(5)(d)4. Additionally, and apart from the extension provisions noted above, the statute provides that the petitioner may request “a new temporary restraining order ... or injunction ... before or at the expiration of a previously entered order or injunction.” *See* § 813.122(5)(dm)2.

Third, this order directs the circuit court to attempt to hold a new hearing with the petitioner, R.J.S., present. However, we realize that, even with notice, R.J.S. may not appear. If

R.J.S. does not appear, it would seem that the circuit court would then be faced with deciding how to alter the current injunction based on the existing record and any additional information that might be presented by D.J.J. (if he appears) or the guardian ad litem. We take no position on whether the existing record supports denying D.J.J. visitation entirely.

IT IS ORDERED that this matter is remanded to the circuit court for further proceedings.

IT IS FURTHER ORDERED that within 7 days of remittitur, which typically occurs 30 days after the date of this opinion and order unless a petition for review is filed, the circuit court shall schedule a hearing to be held within 21 days of remittitur. The court shall provide notice of the hearing to D.J.J., R.J.S., and the guardian ad litem.

IT IS FURTHER ORDERED that the child abuse injunction in this matter is modified as follows. All restrictions in the injunction shall remain the same except the provision specifying: “THIS INJUNCTION SHALL BE EFFECTIVE UNTIL November 9, 2020.” We modify that provision to read: “THIS INJUNCTION SHALL BE EFFECTIVE UNTIL April 2, 2018, or until the circuit court issues a new decision or order affecting the contents of this injunction, whichever occurs first.”

IT IS FURTHER ORDERED that on remand, if the circuit court considers letting the injunction remain in place for some specified duration, the court shall address required considerations, including WIS. STAT. § 813.122(5)(b), and, if necessary, § 813.122(5)(dm)1.

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

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*Diane M. Fremgen*  
*Acting Clerk of Court of Appeals*