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DISTRICT IV

June 26, 2019

To:

Hon. Valerie Bailey-Rihn
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:

2018AP1561

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

Before Blanchard, Kloppenburg and Fitzpatrick, 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., pro se, appeals a circuit court order that denied D.J.J.'s motion to reopen a child abuse injunction order issued to petitioner R.J.S. D.J.J. argues that he established grounds to reopen by setting forth newly discovered evidence that he argues proves that the injunction was obtained by fraud and lacked a reasonable basis. Based upon our review of the brief and record,¹

¹ No respondent's brief has been filed. Accordingly, we consider only the appellant's brief and the record.

we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).² We summarily affirm.

R.J.S. sought a child abuse restraining order against D.J.J. in October 2016. On November 9, 2016, after an injunction hearing, the circuit court granted an injunction prohibiting D.J.J. from having contact with the parties' minor child, S.A.J. D.J.J. appealed the injunction order, challenging 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. *R.J.S. v. D.J.J.*, No. 2016AP2500, unpublished slip op. (WI App Jan. 31, 2018). We issued a decision on January 31, 2018, determining that the evidence was sufficient to support the injunction. *Id.* We also determined, however, that the court erred by issuing an injunction with a four-year duration and by failing to address D.J.J.'s visitation rights. *Id.* Accordingly, we remanded the matter to the court for a hearing to determine the appropriate length of the injunction and D.J.J.'s visitation rights. *Id.* We modified the injunction so that it was effective until April 2, 2018, or until the court issued a new decision or order affecting the contents of the injunction, whichever occurred first. *Id.*

Following a remand hearing, the circuit court issued an order on March 30, 2018, that terminated the injunction on April 2, 2018, and allowed contact between D.J.J. and S.A.J. according to the terms provided in an order in the parties' family court case. On July 23, 2018, D.J.J. moved to reopen the child abuse injunction order. The circuit court denied the motion.

² All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

On appeal, D.J.J. argues that he is entitled to relief under WIS. STAT. § 806.07(1)(h). However, D.J.J. fails to sufficiently develop a coherent argument that applies legal authority to the facts in the record under the proper standards of review. “A party must do more than simply toss a bunch of concepts into the air with the hope that either the [circuit] court or the opposing party will arrange them into viable and fact-supported legal theories.” *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). This court need not consider arguments that either are unsupported by adequate factual and legal citations or are otherwise undeveloped. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). While we make some allowances for the failings of parties who, like D.J.J., appear pro se, “[w]e cannot serve as both advocate and judge,” *id.* at 647, and we will not scour the record to develop arguments for an appellant, *see Jackson*, 229 Wis. 2d at 337. Here, D.J.J. has failed to develop his argument that he was entitled to relief from the injunction order under WIS. STAT. § 806.07(1)(h). We reject D.J.J.’s argument on that basis.

Nonetheless, we choose to address D.J.J.’s arguments as best we understand them. D.J.J. argues that investigations by law enforcement and child protective services subsequent to the injunction hearing established that R.J.S.’s allegations of child abuse were unfounded and unsubstantiated. D.J.J. also contends that he obtained S.A.J.’s medical records subsequent to the injunction hearing, and that there are discrepancies between R.J.S.’s testimony and S.A.J.’s medical records. He argues that the newly discovered evidence establishes that R.J.S. committed

fraud on the court by alleging D.J.J. had abused S.A.J. and that there were insufficient grounds to issue the injunction.³

WISCONSIN STAT. § 806.07(1)(h) provides that a party may seek to reopen an order for “[a]ny other reasons justifying relief from the operation of the judgment,” based on the existence of extraordinary circumstances. *See Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶¶32, 34, 326 Wis. 2d 640, 785 N.W.2d 493. Extraordinary circumstances exist only in “extreme and limited cases.” *Connor v. Connor*, 2001 WI 49, ¶43, 243 Wis. 2d 279, 627 N.W.2d 182. “Extraordinary circumstances are those where the sanctity of the final judgment is outweighed by the incessant command of the court’s conscience that justice be done in light of *all* the facts.” *Miller*, 326 Wis. 2d 640, ¶35 (quoted source omitted). Nothing that D.J.J. identifies as newly discovered evidence establishes that extraordinary circumstances exist to reopen the injunction. D.J.J.’s contentions that subsequent investigations did not support further action by law enforcement or child protective services on R.J.S.’s allegations of abuse, and that there were some discrepancies between R.J.S.’s testimony and S.A.J.’s medical records, do not undermine the circuit court’s decision to grant a child abuse injunction. *See* WIS. STAT. § 813.122(5)(a)3. (judge may grant child abuse injunction if “the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim”). Moreover, to the extent that D.J.J. challenges the

³ D.J.J. acknowledges that a motion to reopen based on newly discovered evidence or fraud must be filed within one year. *See* WIS. STAT. §§ 806.07(1)(b), (1)(c) and (2). D.J.J. argues, however, that he is seeking relief under § 806.07(1)(h), and cites *State ex rel. M.L.B. v. D.G.H.*, 122 Wis. 2d 536, 552, 363 N.W.2d 419 (1985), for the proposition that § 806.07(1)(h) “permits a circuit court to grant relief, even if the fact situation may give rise to a claim under subsections (a), (b) or (c), if extraordinary circumstances justify relief.” We will assume, for purposes of this opinion, that D.J.J.’s motion to reopen is timely under §§ 806.07(1)(h) and (2).

sufficiency of the evidence presented at the injunction hearing to support the injunction, that issue was addressed in D.J.J.’s appeal from the injunction and we do not revisit it here.

Finally, D.J.J. requests that we grant him a new trial in the interest of justice pursuant to WIS. STAT. § 752.35. However, we exercise our discretion to grant a new trial in the interest of justice “only in exceptional cases.” *State v. Cuyler*, 110 Wis. 2d 133, 141, 327 N.W.2d 662 (1983). We decline to do so here.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals