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DISTRICT IV

February 25, 2021

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

2019AP1764 Petitioner v. Cameron V. Travis (L.C. # 2019CV1972)

Before Fitzpatrick, P.J., Blanchard, and Nashold, 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).

Sarah Doe[1] appeals an order denying Sarah's petition for a domestic abuse injunction against Cameron Travis. Sarah contends that the circuit court erred by interpreting the domestic abuse injunction statute as requiring more than one instance of domestic abuse for the court to grant the injunction. She also contends that the court failed to properly exercise its discretion in its decision denying the injunction. Based upon our review of the briefs and record, we conclude

[1] The parties refer to the appellant by the pseudonym "Sarah Doe" or "Sarah," and we do the same.

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

Sarah petitioned for a domestic abuse injunction against Travis. After an injunction hearing, the circuit court found that an incident of domestic abuse had occurred in which Travis strangled Sarah, but that there was insufficient evidence of a continuing danger to Sarah to warrant the injunction. Specifically, the court found that Sarah had vacated the premises she had shared with Travis and that there was no evidence that Travis was stalking Sarah or that the matter was not over between them; that there had been only one incident of a physical altercation between the parties in the months they lived together; and that Sarah's injuries from the one incident of physical abuse were minimal. The court found that there was no reason to believe that there would be further incidents of domestic abuse, and that because there was no threat of continuing danger to Sarah going forward, a domestic abuse injunction was unnecessary.

A circuit court may grant a domestic abuse injunction if the court finds 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." WIS. STAT. § 813.12(4)(a)3. Before granting a domestic abuse injunction, the court "shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent." Sec. 813.12(4)(aj).

We review the circuit court's decision whether to grant a domestic abuse injunction for an erroneous exercise of discretion. *See* WIS. STAT. § 813.12(4)(a) (providing that the circuit

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

court "may" grant a domestic abuse injunction if certain criteria are met); ***Welytok v. Ziolkowski***, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359 (stating that statute providing that court "may" grant an injunction implies exercise of discretion). A circuit court properly exercises its discretion if it reaches a "determination that is demonstrably made and based upon the facts of record and the appropriate and applicable law." ***Welytok***, 312 Wis. 2d 435, ¶24. Because the exercise of discretion is so essential to the circuit court's functioning, we will look for reasons to sustain its discretionary rulings. ***Id.*** We will uphold the circuit court's factual findings unless those findings are clearly erroneous, WIS. STAT. § 805.17(2), but we independently interpret a statute and apply it to the facts. ***Garcia v. Mazda Motor of Am., Inc.***, 2004 WI 93, ¶7, 273 Wis. 2d 612, 682 N.W.2d 365.

Sarah contends that the circuit court erred by interpreting WIS. STAT. § 813.12(4)(a)3. to require more than one instance of domestic abuse for an injunction to issue.[3] She argues that § 813.12(4)(a)3. provides that a circuit court may issue an injunction based on a single instance of domestic abuse. She contends that the court improperly denied the petition based solely on the fact that there was a single instance of domestic abuse. Sarah recognizes that the circuit court also found that the evidence was insufficient to show any continuing danger to Sarah. Sarah argues, however, that the circuit court's finding as to the lack of any continuing danger was a "contrived *post hoc* justification, to disguise" that the reason for the court's decision was the single instance of domestic abuse. She argues that the court's multiple references to there being

[3] We note that Sarah's brief includes a footnote that cites an unpublished per curiam opinion of this court, which is also included in the appendix to the appellant's brief. We remind counsel that it is improper to cite per curiam opinions in briefs to this court even when, as here, counsel acknowledges that the opinion may not be cited as persuasive authority. *See* WIS. STAT. § 809.23(3)(a) and (b) (providing that a per curiam opinion "may not be cited in any court of this state as precedent or authority, except to support a claim of claim preclusion, issue preclusion, or the law of the case").

only a single instance of domestic abuse demonstrated that the court based its decision on that fact. Thus, Sarah argues, the court's mention of any other factors to support its decision was "spurious" and "pretextual." Sarah argues that, because the circuit court's decision to deny the petition was based on there being only a single instance of domestic abuse, the decision was erroneous as a matter of law.

Sarah also contends that, even if the circuit court did not err in its application of the statute, it erroneously exercised its discretion by failing to reach a reasonable determination based on the facts and applicable law. Sarah contends that the court failed to reach a reasonable determination that there was no future danger to Sarah, pointing to testimony that Sarah still had furniture at the parties' shared apartment and that the two remained married. Sarah also contends that, by considering only the single act of domestic abuse, the circuit court failed to consider evidence of non-physical abusive conduct by Travis as part of a "pattern of abusive conduct" under WIS. STAT. § 813.12(4)(aj). Sarah cites her testimony at the injunction hearing that Travis quit Sarah's employment on Sarah's behalf; that he demeaned her with accusations of lying and infidelity; and that he threatened to bar her from their home and to take her life.

Travis responds that, while WIS. STAT. § 813.12(4)(a)3. does not require multiple acts of domestic abuse to support an injunction, it also does not require a circuit court to grant an injunction once a single instance of domestic abuse has been established. He argues that the circuit court properly interpreted § 813.12(4)(aj) as requiring the court to also consider the potential danger to the petitioner and the pattern of abusive conduct of the respondent.

Travis also argues that, here, the circuit court properly exercised its discretion to deny the injunction by considering the facts of record and relying on the appropriate and applicable law.

Travis argues that the circuit court properly considered the lack of continuing danger to Sarah or a pattern of abusive conduct. He contends that the circuit court reached a reasonable decision that was a proper exercise of discretion.

Sarah's first argument—that the circuit court misinterpreted WIS. STAT. § 813.12(4)(a)3. as requiring more than one act of domestic abuse to support an injunction—is unavailing. While the court found that there was only one act of domestic abuse, and considered that fact in its determination that a domestic abuse injunction was not warranted, the court did not deny the injunction on the basis that there was a single act of domestic abuse. Rather, the circuit court found as an initial matter that one act of domestic abuse had been proven, but then determined that a domestic abuse injunction was not warranted after considering the potential danger to Sarah and whether there was a pattern of abusive conduct by Travis. *See* § 813.12(4)(a)3. and (4)(aj) (providing that the circuit court "may" grant a domestic abuse injunction if it finds the respondent has engaged in an act of domestic abuse against the petitioner, but first "shall" consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent). Thus, the court determined that the injunction was not appropriate *despite* the single act of domestic abuse, rather than *because* there was only a single act of domestic abuse. We conclude that the circuit court properly interpreted the statute as allowing it to grant the injunction based on a single act of domestic abuse, but not requiring it to do so.

We also reject Sarah's contention that the circuit court's stated explanation for denying the injunction was pretextual, meant to disguise that the court's real basis for denying the petition was that there was only one act of domestic abuse. Sarah has not explained why we should disregard the circuit court's stated explanation for denying the injunction and assume the court had a different, unstated reason for its decision, and we discern no basis for this court to do so.

Finally, we conclude that the circuit court could properly exercise its discretion to deny the injunction based on its findings. The circuit court explained that it found that there was a single act of domestic abuse in which Travis strangled Sarah, as required to support an injunction under WIS. STAT. § 813.12(4)(a)3. The court then considered the potential danger to Sarah and the pattern of abusive conduct, as required under § 813.12(4)(aj). The circuit court explained that it determined that there was no potential danger to Sarah because the parties were no longer residing together and there was no evidence that the matter between them was not over, and that there was only one instance of domestic abuse in the months the parties lived together.

Sarah points to evidence that she believes would have supported findings of a potential for danger and a pattern of abusive conduct warranting the injunction. However, even if the circuit court could have made those findings, we are not persuaded that it was required to. First, contrary to Sarah's contention, we are not persuaded that the circuit court's finding that an act of domestic abuse occurred as Sarah testified means that the circuit court necessarily found the entirety of Sarah's testimony credible. *See* ***O'Connell v. Schrader***, 145 Wis. 2d 554, 557, 427 N.W.2d 152 (Ct. App. 1988) (explaining the factfinder, as the ultimate arbiter of credibility, has the ability to accept one portion of a witness's testimony and reject another portion; a factfinder can find that a witness is partially truthful and partially untruthful). Second, even assuming that the circuit court found all of Sarah's testimony credible, we are not persuaded that the circuit court was required to grant the injunction based on those facts. The circuit court's determination that an injunction was not necessary after considering the potential for danger and the pattern of abusive conduct was reasonable, even if a contrary decision could have been reached. *See* ***Welytok***, 312 Wis. 2d 435, ¶41 ("Where the record reveals an appropriate exercise of discretion on the court's part, as this record does, we will affirm the decision even if it is one we ourselves

might not have made were we ruling on the matter in the first instance."). Moreover, we search for reasons to uphold a court's exercise of discretion, *see* ***id.***, ¶24, and we are not persuaded that the record does not support the court's decision. Because the circuit court considered the facts in the record and the applicable law to reach a reasonable determination, we affirm its exercise of discretion.[4]

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

[4] In addition to those reasons to affirm the circuit court, Sarah fails to file a reply brief in this court, and that may be taken as a concession of Travis's arguments made in this court to the extent that Travis's arguments are not addressed in Sarah's opening brief. *See* ***United Coop. v. Frontier FS Coop.***, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578.