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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT I

June 15, 2021

To:

Hon. Paul R. Van Grunsven
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room G-8
901 N. 9th St.
Milwaukee, WI 53233

Thomas J. McClure
McClure Law Offices
P.O. Box 180407
Delafield, WI 53018

Andrew Homa
2221 W. Carrington Ave.
Oak Creek, WI 53154

Petitioner

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

2019AP323

Petitioner v. Andrew Homa (L.C. # 2018FA5469)

Before Blanchard, Dugan and Donald, 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).

Andrew Homa appeals the circuit court's order issuing a four-year domestic abuse injunction against him. Homa argues that: (1) there were not reasonable grounds for the injunction; (2) the circuit court's factual findings were clearly erroneous; and (3) the injunction is overly broad in scope. After reviewing the briefs and record, we conclude at conference that

summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We affirm in part, reverse in part and remand for further proceedings consistent with this opinion.

On September 12, 2018, the petitioner sought a domestic abuse injunction against Homa. On September 25, 2018, a court commissioner issued a four-year domestic abuse injunction. On January 15, 2019, the circuit court affirmed the four-year injunction after a *de novo* hearing.

A domestic abuse injunction may be issued for up to four years if the court “finds reasonable grounds to believe that the respondent has engaged in ... domestic abuse of the petitioner.” WIS. STAT. § 813.12(4)(a)3. ““Domestic abuse”” means any of the following engaged in by ... an adult with whom the person has a child in common 4. A violation of s. 940.32.” § 813.12(1) (am)4. Whether there were reasonable grounds to issue the injunction presents a mixed question of fact and law. *See Welytok v. Ziolkowski*, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. “We will not set aside the circuit court’s factual findings unless they are clearly erroneous.” *Id.* “We independently review the circuit court’s conclusion, based on the established facts, whether such reasonable grounds exist.” *Id.*

Homa argues that no reasonable grounds existed to issue the injunction. We disagree. Homa and the petitioner were previously in a relationship and have a child together. Homa was convicted of stalking the petitioner under WIS. STAT. § 940.32 on April 9, 2018, in Milwaukee County Case No. 2017CF5475. Based on the plain language of WIS. STAT. § 813.12(1)(am), Homa engaged in domestic abuse of the petitioner. Therefore, there were reasonable grounds to issue the injunction.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Homa next argues that the circuit court’s findings of fact were clearly erroneous. Homa’s brief focuses almost exclusively on facts applicable to the issuance of an injunction for *harassment* under WIS. STAT. § 813.125, rather than the facts applicable to the issuance of an injunction for *domestic abuse* under WIS. STAT. § 813.12. The dispositive facts for issuance of a domestic abuse injunction were whether Homa has a child in common with the petitioner and whether Homa was convicted of stalking her under WIS. STAT. § 940.32. The circuit court’s findings with regard to these facts were not clearly erroneous; to the contrary, they were undisputed. We reject Homa’s argument that the circuit court’s findings of fact were clearly erroneous.

Finally, Homa argues that the injunction is overly broad in scope because it states that he shall avoid “any location temporarily occupied by the petitioner.” Homa argues that this description prohibits him from attending court proceedings or mediation involving his child with the petitioner in the years ahead. We agree that the injunction order is overly broad because it would prohibit Homa from attending legal proceedings in person with the petitioner regarding the child. Therefore, we remand to the circuit court to modify the scope of the injunction.

Upon the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed in part, reversed in part and remanded for further proceedings. *See* 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