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**DISTRICT III**

February 1, 2022

*To:*

Hon. John P. Anderson  
Circuit Court Judge  
Electronic Notice

Michael B. Padden  
Electronic Notice

Kay Cederberg  
Clerk of Circuit Court  
Bayfield County Courthouse  
Electronic Notice

April Kutz Splittgerber  
Electronic Notice

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

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2021AP724

Todd M. Bonney v. Elizabeth Ward (L. C. No. 2021CV13)

Before Stark, P.J., Hruz and Gill, 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).**

Elizabeth Ward appeals from a harassment injunction granted in favor of Todd Bonney, and from an order denying her motion for reconsideration. Ward argues the circuit court erroneously exercised its discretion by excluding “phone exhibits” that Ward attempted to introduce during the injunction hearing. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup>

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

Bonney filed a petition seeking a temporary restraining order and harassment injunction against Ward. At the injunction hearing, Bonney testified that he and Ward had been in a romantic relationship four years earlier. After their relationship ended, Ward continued to frequently call and text Bonney, and she sent him pictures of herself and other women. Bonney testified that Ward's frequent calls and messages contributed to the end of his relationship with his then-girlfriend. He also testified that Ward caused him to lose close to \$20,000 in rental income by falsely reporting to VRBO—the company through which he rented his properties—that he had cameras hidden in a particular property.

Bonney testified that he had asked Ward to stop sending him messages “[p]robably 20, 25 times over the last four years.” He produced evidence of one text message exchange in which Ward sent him a suggestive photograph, and he responded, “Please stop texting me. This is the last time I’m going to ask.”<sup>2</sup> Bonney also testified that he had blocked Ward’s phone number, but she continued to contact him using “burner” phones or other phone numbers that were not blocked.

Ward, who was self-represented at the injunction hearing, asserted that after she and Bonney ended their romantic relationship, they remained in contact and continued to have a friendly, platonic relationship. In particular, Ward contended that Bonney repeatedly initiated telephone contact with her following their breakup. In support of her claim, Ward attempted to introduce approximately seventy-five pages of what appeared to be call logs and text messages purportedly showing a large amount of post-breakup contact between her and Bonney. Bonney’s

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<sup>2</sup> Ward did not object to the admission of these text messages.

attorney objected to the admission of this evidence based on a lack of foundation, and the circuit court sustained the objection. The court ultimately granted Bonney a harassment injunction against Ward for a period of four years.

Ward then retained counsel and filed a motion for reconsideration. She argued the circuit court had erred by excluding the phone records that she attempted to introduce during the injunction hearing. In an affidavit attached to her motion, Ward asserted that she had provided copies of the phone records to both Bonney and the court prior to the injunction hearing, based on instructions she had received from court staff. During a hearing on Ward's motion for reconsideration, her attorney further argued that Ward "could've easily established foundation" for the phone records.

The circuit court denied Ward's motion for reconsideration. The court noted that the prefilings of exhibits does not guarantee that the exhibits will be received into evidence at trial. The court acknowledged that if Ward had been more knowledgeable about the law, or had been represented by counsel during the injunction hearing, "she probably could've gotten [the phone records] in as an exhibit." The court stated, however, that even without the phone records, an "enormous amount" of testimony was presented during the injunction hearing regarding the continuing contact between Ward and Bonney following their breakup. Thus, the court stated the phone records would not have changed its decision to grant the injunction. The court further stated that Ward was not entitled to a "do over" simply because she was not prepared to admit the phone records during the injunction hearing.

Ward now appeals, arguing that the circuit court erred by refusing to admit the phone records and by denying her subsequent motion to reconsider that decision. We review a circuit

court's ruling on the admissibility of evidence for an erroneous exercise of discretion. *State v. Ross*, 2003 WI App 27, ¶35, 260 Wis. 2d 291, 659 N.W.2d 122. We apply the same standard of review to a court's decision on a motion for reconsideration. *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853. We will sustain a discretionary decision as long as the court examined the relevant facts, applied a proper standard of law, and used a rational process to reach a reasonable conclusion. *Ross*, 260 Wis. 2d 291, ¶35.

Ward has failed to present a developed argument showing that the circuit court erroneously exercised its discretion either by refusing to admit the phone records or by denying her motion for reconsideration. With respect to the court's initial decision to exclude the phone records, Ward merely asserts that "the notion that Ward could not lay foundation for her own phone records was frankly nothing short of bizarre." Ward does not, however, cite any legal authority supporting her claim that the court erred by refusing to admit the phone records. In addition, she does not cite any portion of the appellate record showing that she ever laid a proper foundation to introduce the records or even attempted to do so—either during the injunction hearing or during the subsequent hearing on her motion for reconsideration.

Our review of the record confirms that Ward never laid a proper foundation for the phone records. She did not, for instance, attempt to identify the different records within the approximately seventy-five-page packet that she submitted to the court, nor did she attempt to explain when, how, and by whom the records were created. On appeal, Ward simply asserts, without more, that she *could have* laid a foundation for the records. That bald assertion is not enough to establish that the court erroneously exercised its discretion by refusing to admit the records.

Ward has also failed to show that the circuit court erroneously exercised its discretion by denying her motion for reconsideration. The court expressly stated in its decision on reconsideration that the phone records would not have changed its decision to grant the harassment injunction because the court had already heard an “enormous amount” of testimony regarding the post-breakup contacts between Ward and Bonney. In essence, the court concluded that any error it may have committed in refusing to admit the phone records was harmless, as the alleged error did not have any effect on the outcome of the case. *See* WIS. STAT. § 901.03(1) (“Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected.”). Ward does not address the court’s reasoning or explain why it constituted an erroneous exercise of discretion. By failing to address the grounds upon which the court relied when denying her reconsideration motion, Ward has conceded the validity of the court’s ruling. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994).

Aside from arguing that the circuit court erroneously exercised its discretion by refusing to admit the phone records and by denying her reconsideration motion, Ward does not argue that the court erred in any other respect by granting the harassment injunction. She does not raise any argument that the evidence presented during the injunction hearing was insufficient to support the court’s decision to grant the injunction. We therefore affirm.

Upon the foregoing,

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*