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DISTRICT IV

May 25, 2023

To:

Hon. Paul S. Curran
Circuit Court Judge
Electronic Notice

Alecia Pellegrini-Kast
Clerk of Circuit Court
Juneau County Justice Center
Electronic Notice

Katherine E. Campbell
Electronic Notice

Robert S. Oganezov

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

2022AP789 Petitioner v. Robert S. Oganezov (L.C. # 2022CV43)

Before Fitzpatrick, Graham, 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).

Robert Oganezov, pro se, appeals a circuit court order granting a domestic abuse injunction and a subsequent order extending the injunction. Oganezov argues that there were errors in the injunction proceedings and that there was insufficient evidence to support the injunction or the extension. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).[1] We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2021-22 version.

On March 10, 2022, the petitioner sought a domestic abuse injunction against Oganezov. The circuit court held an injunction hearing on March 23, 2022. Both the petitioner and Oganezov testified at the hearing. At the conclusion of the hearing, the court found grounds for the injunction. Specifically, the court found that Oganezov "really didn't deny" the petitioner's testimony that Oganezov hit and choked her. The court issued an injunction for six months, which the court later extended to two years.

A circuit court may issue a domestic abuse injunction if it "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 includes "[i]ntentional infliction of physical pain" or "physical injury." *See* WIS. STAT. § 813.12(1)(am)1. The decision to grant or deny an injunction is within the court's discretion. *See* ***Sunnyside Feed Co., Inc. v. City of Portage***, 222 Wis. 2d 461, 471, 588 N.W.2d 278 (Ct. App. 1998).

Oganezov argues that the petitioner's claims were too vague for him to defend himself. We disagree. Under WIS. STAT. § 813.12(5)(a), a petitioner must allege facts in the petition sufficient to show that "the respondent engaged in … domestic abuse of the petitioner." Here, the petitioner attached to her petition a criminal complaint charging Oganezov with aggravated battery and strangulation, and setting forth the petitioner's allegations that, on December 14, 2021, Oganezov choked and repeatedly struck her, resulting in the petitioner suffering multiple broken ribs. Those facts were sufficient to provide Oganezov with notice of the petitioner's allegations in support of the petition for an injunction. *See* ***Schramek v. Bohren***, 145 Wis. 2d 695, 704, 429 N.W.2d 501 (Ct. App. 1988) ("When the rights of a person are affected by judicial or quasi-judicial decree, adequate due process requires that the notice must reasonably convey

information about the proceedings so that the respondent can prepare a defense or make objections.").

Oganezov also argues that he was not permitted to present evidence at the injunction hearing.[2] However, the transcript of the hearing reveals that, before making its decision, the circuit court specifically asked Oganezov if there was anything else he would like the court to know, and Oganezov responded, "That's it." It was only after the court ruled that the petitioner had established the criteria for an injunction that Oganezov suggested that he had videotape evidence to present. The court stated that Oganezov would not be allowed to do so, explaining that it was "too late" and that the court "already gave [Oganezov] the opportunity to tell [the court] anything [he] wanted." The court had broad discretion to control the introduction of evidence, and we are not persuaded that the court erroneously exercised its discretion by declining to allow Oganezov to present evidence after the evidentiary portion of the hearing had passed. *See* ***State v. James***, 2005 WI App 188, ¶8, 285 Wis. 2d 783, 703 N.W.2d 727 ("[Circuit] courts have broad discretion to admit or exclude evidence and to control the order and presentation of evidence at trial; we will upset their decisions only where they have erroneously exercised that discretion.").

Oganezov also argues that the circuit court erred by denying his request to adjourn the hearing so that he could obtain counsel. However, the transcript shows that Oganezov made that request for the first time after the petitioner had finished presenting her evidence. The court

[2] In a related argument, Oganezov contends that he has new evidence to oppose the injunction. However, any motion to present new evidence in this case must be made as an initial matter to the circuit court, not this court. The scope of this appeal is limited to whether the circuit court erred in connection with the injunction that was issued, and this court's review is limited to material already in the record.

denied the request on the basis that it was made "halfway through the hearing" and that, if Oganezov had wanted to be represented by an attorney, he should have already retained one by that point. We are not persuaded that the court erroneously exercised its discretion by denying the request for an adjournment. *See* ***State v. Leighton***, 2000 WI App 156, ¶27, 237 Wis. 2d 709, 616 N.W.2d 126 ("The decision whether to grant or deny an adjournment request is left to the [circuit] court's discretion and will not be reversed on appeal absent an erroneous exercise of discretion.").

Finally, Oganezov argues that the evidence was insufficient to support the injunction. He argues that there was no evidence to support the injunction besides the petitioner's testimony, and that his own testimony refuted her testimony. Oganezov asserts that the circuit court erred by finding that Oganezov "really didn't deny" the petitioner's allegations. We are not persuaded that the evidence was insufficient to support the injunction.

At the outset, the petitioner's testimony, if deemed credible by the circuit court, was itself sufficient evidence to support the injunction. *See* ***Johnson v. Merta***, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980) (when the circuit court acts as fact finder, it determines the "weight of testimony and credibility of witnesses"); *see also* WIS. STAT. § 813.12(4)(a)3. (court may grant a domestic abuse injunction if, after a hearing, the court finds "reasonable grounds to believe that the respondent has engaged in … domestic abuse of the petitioner").

We also reject Oganezov's argument that the circuit court erred by finding that Oganezov "really didn't deny" the petitioner's allegations. When the court asked Oganezov whether he broke the petitioner's ribs, Oganezov first answered, "I do not recall." The court asked Oganezov if he recalled strangling the petitioner, and Oganezov responded, "I don't recall

strangling her, except maybe during sex." The court asked more specifically if Oganezov put his hands around her neck, and Oganezov responded, "I don't recall that, no." When the court tried to clarify that, even though Oganezov did remember some things, he did not remember choking the petitioner or breaking her ribs, Oganezov stated: "I did not break her ribs." The court then said: "Okay. A minute ago, you said you didn't know or didn't recall. Did you just—." Oganezov then interrupted by stating, "Sorry. I suppose I should say the Fifth until I have my attorney present would be the proper answer so that we don't get specificities."[3] Thus, Oganezov ultimately refused to answer whether he broke the petitioner's ribs. Accordingly, the court's finding that Oganezov failed to deny that allegation is supported by the record. We discern no basis to disturb the circuit court's decision.[4]

[3] Oganezov asserts that he originally answered "I do not recall that," not "I do not recall," to the circuit court's question of whether Oganezov broke the petitioner's ribs. However, because Oganezov ultimately refused to answer, we are not concerned with whether his original response was "I do not recall" or "I do not recall that."

Oganezov also argues that the circuit court misunderstood that Oganezov was asserting his Fifth Amendment right against self-incrimination as to whether he broke the petitioner's ribs. Rather, Oganezov asserts, he was "pleading the Fifth" only as to the court's question whether Oganezov's prior answer had been that he did not recall breaking the petitioner's ribs. Oganezov asserts that he was asserting that right as to what his prior answer had been because he did not want to risk a perjury charge if he had said something that was not true. We reject that reasoning. First, at the outset of Oganezov's testimony, the court explained that, if Oganezov did not want to answer any question out of concern that it could be used against him in his related pending criminal case, he could assert his Fifth Amendment right. Oganezov stated that he understood. Additionally, it is not clear how refusing to clarify a prior answer would protect Oganezov from a future perjury charge if the prior answer had been untrue. Rather, if Oganezov had been concerned that he could be charged with perjury for a prior false answer, it would seem he would have taken advantage of the opportunity to clarify that answer. Finally, Oganezov himself explained that he was "pleading the Fifth" since his attorney for the criminal matter was not present, and so that he would not get into "specificities," statements that appear to reference the criminal charges against him based on the petitioner's allegations.

[4] We briefly address and reject outright two other arguments that Oganezov asserts. First, Oganezov argues that the petitioner provided false information in the petition and to police, citing a criminal statute and a criminal case addressing the crime of obstructing an officer. *See* WIS. STAT. § 946.41(3) (setting forth crime of obstructing an officer), and ***State v. Reed***, 2005 WI 53, ¶47-48, 280

(continued)

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.

Sheila T. Reiff
Clerk of Court of Appeals

Wis. 2d 68, 695 N.W.2d 315 (addressing the sufficiency of a criminal complaint charging obstructing an officer). To the extent that Oganezov is arguing that the petitioner has committed the crime of obstructing an officer, that argument is irrelevant to our review of the decision in this case. Second, Oganezov argues that the petitioner is using the injunction proceedings as retaliation or to impact the criminal proceedings against Oganezov. However, Oganezov does not explain how the petitioner's motivation, or any impact of the injunction on the criminal case, would provide a basis for this court to reverse the injunction.

To the extent that Oganezov makes any other arguments not addressed in this petition, we deem those arguments insufficiently developed to warrant a response. *See* ***Wisconsin Conf. Bd. of Trs. of United Methodist Church, Inc. v. Culver***, 2001 WI 55, ¶38, 243 Wis. 2d 394, 627 N.W.2d 469.