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DISTRICT IV

June 29, 2023

To:

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Circuit Court Judge
Electronic Notice

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Melanie Leutenegger
Clerk of Circuit Court
Green County Courthouse
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Lisa Goldman
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Laura Evelyn Pandow

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

2022AP2185

Laura Evelyn Pandow v. Danielle Joyce Beggs-Zimmerman
(L.C. # 2018CV222)

Before Blanchard, P.J., Kloppenburg, 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).

Danielle Beggs-Zimmerman appeals an order denying her motions regarding a harassment injunction against her. Respondent Laura Pandow did not file a brief, and the appeal was submitted to this court for decision based on the appellant's brief. Based upon our review of the brief and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We affirm in part, reverse in part, and remand with directions to vacate the amended injunction entered in February 2022.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The original injunction was entered against Beggs-Zimmerman in November 2018. In February 2022, the circuit court amended the injunction to require her to remain a certain distance away from petitioner Pandow, Pandow's residence, and Pandow's place of employment. Also in February 2022, Beggs-Zimmerman moved to reopen and dismiss the original injunction due to lack of personal service of the injunction petition and temporary restraining order. Later that month, she also moved to vacate the amendment to the injunction due to lack of notice and hearing on the amendment. The circuit court held a hearing on these motions and denied both.

On appeal, Beggs-Zimmerman first argues that the circuit court erred by denying her motion to reopen and dismiss the original injunction due to lack of personal service of the injunction petition. She argues that the court erred by relying on laches as the basis for its denial.

Although Beggs-Zimmerman's circuit court motion did not identify any legal theory for vacating the injunction, on appeal she argues that the judgment was void and can thus be vacated under WIS. STAT. § 806.07(1)(d). She cites case law from 1951 and 1970 for the propositions that a void judgment may be expunged at any time, and that laches is not a defense to such a motion. She further asserts that "§ 806.07(1) does not contain a time period after which a motion to vacate a void judgment must be filed."

However, WIS. STAT. § 806.07 does contain a requirement that the motion be made "within a reasonable time." Sec. 806.07(2). That statute became effective in 1976. *See* S. Ct. ORDER 67 Wis. 2d 585, 726 (1975). Because Beggs-Zimmerman does not discuss this potentially applicable statute, or explain its relationship to her cited case law that was issued before the statute, we conclude that she has failed to develop a persuasive argument that reversal is required.

In addition, in the course of concluding that Beggs-Zimmerman's motion was barred by laches, the circuit court focused closely on the amount of time that had passed and her previous opportunities to challenge the injunction on the bases now being argued. The court concluded: "And so I think to say that she basically rested on her rights and delayed any such motion, I think the delay is by any stretch of the imagination unreasonable."

Although the circuit court was not expressly relying on the "reasonable time" requirement of WIS. STAT. § 806.07(2), the court appears to have reached a conclusion that the motion was not made within a reasonable time. On appeal, Beggs-Zimmerman argues that laches was not a proper basis to deny her motion, but she does not argue that the court erred in its conclusion that her delay was unreasonable. Therefore, Beggs-Zimmerman has not provided a basis to reverse that conclusion, and we affirm that part of the order appealed from that denies her motion to vacate the original injunction.

Beggs-Zimmerman also moved to vacate the 2022 amendment to the injunction on the ground that she was not given notice of the request for the amendment or a chance to be heard. The circuit court denied this motion on the ground that the amendment was not an *ex parte* order, but only a clarification to make the injunction more specific.

On appeal, Beggs-Zimmerman correctly observes that the amendment to the injunction was made on the basis of a request from Green Haven Family Advocates, which stated that Pandow wanted to amend the injunction, and requested the 200-yard limit that was later added. We agree that this was the functional equivalent of a motion that was required to be served on the parties, unless permitted to be heard *ex parte*. *See* WIS. STAT. § 801.14(1). In addition, all written motions shall be heard on notice unless a statute or rule permits the motion to be heard *ex*

parte. WIS. STAT. § 801.15(4). The circuit court here did not identify any law that permitted an ex parte amendment of the injunction, and we are not aware of any. Accordingly, we reverse the part of the court order that denied the motion to vacate the amendment.

As a remedy, Beggs-Zimmerman asks that we declare the amended injunction void and direct that it be expunged. She does not explain what expungement would mean in this context, or what legal authority there would be for that remedy. Therefore, we reverse the order appealed from in part, and remand with directions to vacate the amended injunction entered in February 2022. If the original injunction has, for some reason, not expired as originally expected, this order is not intended to prevent the circuit court from amending the injunction again, with proper notice and hearing.

IT IS ORDERED that the order appealed from is summarily affirmed in part; reversed in part; and the cause is remanded with directions, under WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals