

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 13, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2006AP2683
2006AP2684
2006AP2685
2006AP2686**

**Cir. Ct. Nos. 2006CV421
2006CV423
2006CV424
2006CV425**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

Appeal No. 2006AP2683

KERI J. S. AND R. L. S.,

PETITIONERS-RESPONDENTS,

V.

PATRICK D. S.,

RESPONDENT-APPELLANT.

Appeal No. 2006AP2684

KERI J. S. AND E. P. S.,

PETITIONERS-RESPONDENTS,

V.

PATRICK D. S.,

RESPONDENT-APPELLANT.

Appeal No. 2006AP2685

KERI J. S. AND S. A. S.,

PETITIONERS-RESPONDENTS,

V.

PATRICK D. S.,

RESPONDENT-APPELLANT.

Appeal No. 2006AP2686

KERI J. S. AND A. D. S.,

PETITIONERS-RESPONDENTS,

V.

PATRICK D. S.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Sauk County:
PATRICK J. TAGGART, Judge. *Affirmed.*

Before Higginbotham, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Patrick D.S. challenges four child abuse injunctions barring him from having contact with his children Shana, Rebecca,

Adriana, and Ethan, for a period of four years. We affirm the injunctions for the reasons discussed below.

BACKGROUND

¶2 Patrick’s wife Keri J.S. petitioned for the child abuse injunctions in conjunction with a divorce action and a request for a domestic restraining order. Keri is the mother of Rebecca, Adriana, and Ethan, while Shana is Patrick’s daughter from a prior relationship. Keri testified that Patrick had suffered a brain injury in an accident about two years earlier that had changed his demeanor. Keri had observed Patrick violently shaking Shana on two occasions and also punching her in the chest on one of those occasions because he was upset about her grades. Keri had also observed Patrick hitting Rebecca on the back of the head “as hard as he could” for not doing the dishes and throwing toys at Ethan when he did not pick them up fast enough. In addition, Keri had heard Patrick talk about getting a gun and say that he wanted “to kill the fucking bitch,” apparently referring to her.

¶3 Fourteen-year-old Shana testified that her dad “gets real mad” and hits the children on the back of the head. She said Patrick had both hit her in the head and punched her. She said she once had a bump on the back of her head from her father hitting her, and that it hurt, but that she was afraid to cry. She said she was afraid of her father.

¶4 Ten-year-old Rebecca could not remember if her father had ever hit her on the back of the head, but said she was scared of him because he screams and yells. She testified she had once seen Patrick hit Shana in the collar bone, but Shana did not cry because Patrick had said they “shouldn’t cry around the house”

or “he would give [them] something to cry about.” She also said that she had seen Patrick throw a pan at Ethan when he was frustrated.

¶5 Eight-year-old Adriana testified that her father had hit her on the back of the head for failing to do the dishes right, and on another occasion had thrown her against the wall so hard she fell and had a bump on her back. She had seen her father hitting Shana and Rebecca on the back of the head and throwing a pan at Ethan when he was mad. She also said she was scared of her father.

¶6 Six-year-old Ethan similarly testified that Patrick hit him and his sisters on the back of the head when he is mad, and it hurts a little, but the children are not allowed to cry in the house.

¶7 Patrick testified that he had had difficulty controlling his emotions for a short time after his accident and surgery, but claimed he was past that. He acknowledged cuffing the children on the back of the head “out of affection” and throwing a pan once when angry, but denied ever hitting the children or physically disciplining them. Patrick also admitted he had kicked the dog on one occasion.

¶8 The trial court found Keri and particularly the children to be credible, and accepted their testimony. The judge noted that in thirteen years on the bench he could not remember seeing any children more scared than these four. The court acknowledged that the actual physical injuries inflicted on the children so far had not been very serious, but nonetheless found there were reasonable grounds to believe that Patrick “has engaged in” or “may engage” in abuse of each of the children.

DISCUSSION

¶9 A judge may grant a child abuse injunction after finding there are “reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim.” WIS. STAT. § 813.122(5)(a)3 (2005-06).¹ For the purpose of the statute, “abuse” is defined to include “[p]hysical injury inflicted on a child by other than accidental means” and “emotional damage.” Section 813.122(1)(a) and WIS. STAT. § 48.02(1)(a) and (gm). “Physical injury” is defined to include “lacerations, fractured bones, burns, internal injuries, severe or frequent bruising, or great bodily harm.” Section 48.02(14g).

¶10 We apply a mixed standard of review to the trial court’s decision to grant an injunction. *See Kristi L.M. v. Dennis E.M.*, 2007 WI 85, ¶¶21-22, ___ Wis. 2d ___, 734 N.W.2d 375. We will affirm the court’s factual findings unless clearly erroneous, but will independently review whether the evidence shows reasonable grounds. *Id.* If reasonable grounds exist, the trial court has discretion whether to grant the injunction. *See id.*

¶11 As a threshold matter, Patrick challenges Keri’s credibility and any factual findings made based upon her testimony. He claims that her abuse allegations were motivated solely by a desire to obtain custody of the children. The trial court explicitly considered that motivation, however, and rejected it. Credibility determinations by a trial court acting as the factfinder are not

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

reviewable by this court. *State v. Oswald*, 2000 WI App 3, ¶47, 232 Wis. 2d 103, 606 N.W.2d 238. We are satisfied that the trial court’s factual findings were directly based upon testimony in the record and were not clearly erroneous.

¶12 Patrick’s primary contention is that the trial court did not find—and even with Keri’s testimony, the record would not show—that any of the incidents with his children caused any specific injuries such as lacerations, fractured bones, burns, internal injuries, severe or frequent bruising, or great bodily harm. He argues that any pain his children suffered at his hands qualifies only as bodily harm, not great bodily harm, and is therefore insufficient to qualify as abuse. He also maintains there was no evidence which would show that the children had suffered any significant emotional damage. We need not address any of these arguments, however, because we conclude the record as a whole provides reasonable grounds to believe that Patrick’s past conduct shows he “may engage” in physical abuse which rises to the statutory level in the future.

¶13 *Kristi L.M.* explains that a court may look at the “cumulative aspect” of the evidence, rather than focusing on one specific incident. 734 N.W.2d 375, ¶35. Here, the evidence showed a pattern in which Patrick took his anger out on his children with physical violence, which ranged from perhaps minor cuffs on the head to hard punches, thrown objects, severe shaking, and shoving a child against a wall. The incidents were frequent enough that all of the children were visibly frightened of their father. It is reasonable to infer that such uncontrolled behavior might eventually result in some significantly more serious injuries than have so far been inflicted. Under the statute, a judge is not required to wait until more significant injuries occur before acting to protect children from a dangerous environment.

¶14 Finally, Patrick claims that issuing a child abuse injunction without a finding that abuse has already occurred violates his constitutional right to have a relationship with his children, and to discipline them. He does not explain whether he is attempting to raise a facial or as-applied challenge. However, we are not persuaded that the statute is incapable of constitutional application or that its application under the facts of this case would violate Patrick's constitutional rights. Again, this is not merely a case of cuffing children on the head as an arguable form of discipline, but of engaging in a pattern of behavior frequent enough and violent enough to provide grounds to believe that the children are at risk of suffering more serious physical abuse in the future.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

