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DISTRICT II

January 14, 2015

To:

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

2014AP815-FT Alyssa Rae Brittain v. Joseph Russell Koput (L.C. # 2013CV2606)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Joseph Koput appeals from a circuit court order enjoining him from harassing Alyssa Brittain. On appeal, Koput argues that the circuit court erred when it concluded that WIS. STAT. § 813.126 (2011-12)¹ is unconstitutional insofar as it mandates that a de novo hearing be held within thirty days of the request for the de novo hearing. Koput argues that he should have had the benefit of the statute and the de novo hearing was not timely held. Pursuant to a presubmission conference and this court's order of May 8, 2014, the parties submitted memorandum briefs. Upon review of those memoranda and the record, we conclude that the circuit court properly extended the time to hold the de novo hearing. We affirm.

¹ All subsequent references to the Wisconsin Statutes are to the 2011-12 version.

Brittain petitioned for a harassment injunction under WIS. STAT. § 813.125. On December 9, 2013, a court commissioner granted the injunction. On December 13, Koput requested a de novo hearing. The de novo hearing was scheduled for January 17, 2014. On January 17, the parties appeared before the circuit court. Counsel for Brittain appeared at the hearing; Brittain, a minor, did not appear. Counsel explained that as a result of Koput's conduct, Brittain had moved and counsel was having trouble locating her. Brittain's counsel requested an extension of time to locate Brittain. The court noted the complexities presented by Koput's status as a ward under a guardianship due to an incompetency determination. The court expressed its concern about the WIS. STAT. § 813.126 thirty-day de novo hearing deadline and found that the requirement interfered with the court's ability to manage its docket based on the circumstances of the case. The court concluded that § 813.126 was unconstitutional and scheduled the de novo hearing for March 6, more than thirty days after Koput's de novo hearing demand. After the de novo hearing, the circuit court entered a harassment injunction against Koput. Koput appeals.

The sole issue on appeal relates to the circuit court's conclusion that WIS. STAT. § 813.126 is unconstitutional.² Koput argues that the statute is constitutional and, as such, the injunction petition should have been dismissed because the de novo hearing was not held within thirty days of his hearing demand. Brittain disagrees, arguing that the circuit court properly determined that an extension of time was necessary.

² Koput does not challenge the harassment injunction as lacking a factual basis for the relief granted.

We are not required to address an appellate argument in the manner which a party has framed the issue. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978). We “decide cases on the narrowest possible grounds,” and we do “not reach constitutional issues where the resolution of other issues disposes of an appeal.” *State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997).

The circuit court’s conclusion that WIS. STAT. § 813.126 is unconstitutional was unnecessary to its decision to extend the time to hold the de novo hearing. Section 813.126 explicitly permits the circuit court to find good cause to extend the thirty-day deadline for holding a de novo hearing.³ Within the thirty-day period contemplated by § 813.126, the court found good cause to extend the time to hold the de novo hearing.⁴ The court’s findings regarding the need for an extension are supported in the record: Brittain was a minor and was not present, Koput had been found incompetent and his status raised concerns about whether he could be a proper adverse witness, and common sense required adjourning the hearing to address these

³ WISCONSIN STAT. § 813.126 provides:

If a party seeks to have the judge conduct a hearing de novo under [WIS. STAT. §] 757.69 (8) of a determination, order, or ruling entered by a court commissioner in an action under [WIS. STAT. §§] 813.12, 813.122, 813.123, or 813.125, including a denial of a request for a temporary restraining order, the motion requesting the hearing must be filed with the court within 30 days after the circuit court commissioner issued the determination, order, or ruling. **The court shall hold the de novo hearing within 30 days after the motion requesting the hearing is filed with the court unless the court finds good cause for an extension.** (Emphasis added.)

⁴ The circuit court did not use the words “good cause.” However, we generally do not require that a court use “magic words.” *Michael A.P. v. Solsrud*, 178 Wis. 2d 137, 151, 502 N.W.2d 918 (Ct. App. 1993).

complexities. The court complied with § 813.126. We need not address any constitutional issues.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

Diane M. Fremgen
Clerk of Court of Appeals