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DISTRICT IV

December 22, 2015

To:

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Lindsey Michelle Karr

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

2013AP2829 Lindsey Michelle Karr v. Betty Lawton
(L. C. No. 2013CV1162)

Before Lundsten, Higginbotham, and Blanchard, JJ.

Betty Lawton appeals an order granting a harassment injunction. Lawton argues the circuit court's factual findings were clearly erroneous. Lawton also argues that the court deprived her of any meaningful opportunity to respond to the allegations at the 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.[1]

[1] References to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Whether to grant an injunction is within the sound discretion of the circuit court, and our review is ultimately limited to whether that discretion was properly exercised. *See* ***Welytok v. Ziolkowski***, 2008 WI App 67, ¶¶23-24, 312 Wis. 2d 435, 752 N.W.2d 359. We may not overturn a discretionary determination that is demonstrably made and based upon the facts of record and applicable law. Because the exercise of discretion is essential to the circuit court's functioning, we generally look for reasons to sustain discretionary rulings. ***Id.***, ¶24.

In the present case, we reject Lawton's argument that the circuit court's findings of fact were clearly erroneous. Lindsey Karr petitioned the court for an injunction under WIS. STAT. § 813.125,[2] alleging that starting in or about September 2013, Lawton harassed Karr and her daughter, as well as Karr's roommate Richard Brown. Lawton also allegedly called Karr's neighbors and told them Karr was a dangerous felon.

At the hearing, the parties appeared pro se. Karr testified:

> There has been an eleven-year history of where this—this is like a circle that has never ended because her son and I have a child together. If I try to act civil with [Lawton's] son, he takes it as I like him, maybe we can be in a relationship.

Karr testified that after she turned down advances from Lawton's son in September 2013, Lawton sent her the following text message:

> I'm in Stoughton so that way they will think you were lying. I'll make sure you don't have [your daughter]. I'll make her scared since I'm not allowed to have her. Either we are a family, or I'll do to you what I'm doing to Michelle. Juan won't kick me out. Bet on it.

[2] WISCONSIN STAT. § 813.125 has been amended by 2015-16 Wisc. Legis. Serv. Act 109 (2015 A.B. 220), but the amendment does not matter to the issues in this appeal.

Lawton denied sending the text, alleging that "Lindsey sent it to herself." However, Karr further testified:

> After I got this message, I had sent [Lawton] a message stating that if she does not stop contacting me, I will be getting a restraining order. And then it continued on to where she was contacting my twelve-year-old daughter.

Karr called her roommate Brown as a witness, who testified that Karr was "staying in my spare bedroom right now." Brown also testified that Lawton called him three or four times "most days" and told Brown that Karr was "no good." Brown drew the conclusion that the only reason Lawton was calling "was to say bad things" about Karr, and to harass Karr. At least once a day, Lawton would ask Brown to "kick [Karr] out" because she was "no good" and a "convicted felon." Brown further testified, "There was talk of [Lawton] calling [Karr's] daughter and asking her questions about her mother."

Lawton admitted to the circuit court that she had called Karr's daughter. Lawton also admitted that she and Brown "called each other every day." However, in response to the court's inquiry, Lawton denied that the only reason she called Brown "is so that he'd pass the message on to Ms. Karr over here." Lawton admitted, however, that she probably called Brown once to ask him to "get rid of her."

The court found Brown's testimony credible, and stated to Brown:

> You were the key in this whole case. I believed what you had to say, and frankly, I don't think there was any reason that Ms. Lawton was calling you to say bad things about Ms. Karr other than the fact that it was going to go in one of your ears and right to her ….

The circuit court also stated:

> I think that these phone calls to Mr. Brown—Mr. Brown was a cat's - paw. He was—he was the methodology by which the information was transmitted deliberately, intentionally, and with malice aforethought—if you want to use that phrase—by Ms. Lawton to stick a needle into Ms. Karr for no good reason other than to harass her and make her miserable and to call a person who is shielding her from the rest of the world and giving her a place to stay and say, throw her out; she's no good.

Lawton argues that "Brown's testimony deserved to be afforded very limited persuasive weight, if any at all." However, the circuit court is the ultimate arbiter of the weight and credibility of witness testimony. WIS. STAT. § 805.17(2). The court properly exercised its discretion in rejecting Lawton's contention that Brown got certain aspects of the communications wrong.

Lawton argues that "[n]o reasonable view of the supportive evidence … justified the granting of the injunction." We disagree. Lawton may not shield her harassing conduct from regulation by communicating through Brown, as opposed to directly to Karr. As the court stated, Brown was the "methodology" by which Lawton would "stick a needle into Ms. Karr for no good reason other than to harass her and make her miserable …." The record supports the circuit court's determination that Lawton's actions constituted a course of conduct amounting to harassment that served no legitimate purpose. *See* WIS. STAT. § 947.013; ***Welytok***, 312 Wis. 2d 435, ¶25.

Finally, Lawton argues the circuit court deprived her of any meaningful opportunity to respond to the allegations at the hearing. Lawton essentially complains that the court accepted Brown's testimony without allowing Lawton to call Brown's ex-wife as a witness. Lawton asserts "the Court did not even inquire about the subject of Ms. Brown's testimony," but Lawton fails to provide legal authority supporting her suggestion that the court was obligated to do so.

We need not consider unsupported arguments. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). We note, however, that Lawton did not advise the court as to what she believed Brown's ex-wife would say if called as a witness, and complaints of uncalled witnesses are not favored in any event because such allegations are ordinarily speculative. *See* ***State v. Street***, 202 Wis. 2d 533, 549, 551 N.W.2d 830 (Ct. App. 1996).

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals