



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

April 5, 2016

To:

Hon. Raymond S. Huber
Circuit Court Judge
Waupaca County Courthouse
811 Harding Street
Waupaca, WI 54981

Blake Attoe

Brittany Blake

Terrie J. Tews
Clerk of Circuit Court
Waupaca County Courthouse
811 Harding Street
Waupaca, WI 54981

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

2015AP227

Blake Attoe v. Brittany Blake (L. C. #2014CV399)

Before Kloppenburg, P.J., Higginbotham and Sherman, JJ.

Brittany Blake, pro se, appeals an order granting a harassment injunction. 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 (2013-14).¹

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

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

record and applicable law. Because the exercise of discretion is essential to the circuit court's functioning, we look for reasons to sustain discretionary rulings. *Id.*, ¶24.

In the present case, Blake Attoe's restraining order petition alleged that after he broke off an intimate relationship with Brittany, she continued to contact him "daily via phone calls, text messages and through skype (even though I blocked her) on a [consistent] and obsessive level."

At the hearing, Blake testified as follows:

And so how this whole deal came along is I told [Brittany] that I no longer wanted to see her; and the way she responded, she was unhappy. And I let her know that I wanted to be left alone several times, and she didn't listen to me actually at all. I blocked her on Skype.... It got [so] bad that she was calling me so frequently and texting me, and leaving me voice mails, that I had to change my number

A witness also testified on behalf of Blake. When asked to describe Brittany's response to the end of the relationship, the witness testified that Brittany "did not take it very well." The witness agreed with Blake's characterization of Brittany as "persistent and obsessive."

Brittany testified at the hearing that Blake was falsely accusing her of harassment. She suggested the motivation for the restraining order was that Blake "borrowed \$300.00 from me for rent," and "I think that Blake doesn't want to pay me back the \$300.00" Brittany denied contacting Blake. She testified that Blake "has bipolar like moments" and "he has an obsession with me." Brittany stated that she did not want to have any contact with Blake. She testified: "I don't want anything to do with him." Under cross-examination, Blake asked Brittany:

Q: Suppose my last question would be, if you don't want to have contact with me, then I feel like it wouldn't matter if there was a restraining order?

A: No, it wouldn't.

The record supports the circuit court's discretionary determination that Brittany engaged in a course of conduct amounting to harassment that served no legitimate purpose. *See* WIS. STAT. § 813.125; *Welytok*, 312 Wis. 2d 435, ¶25. Brittany argues that Blake lied in his petition and during his testimony, and that his witness also lied. However, the circuit court is the ultimate arbiter of the weight of the evidence and the credibility of the witnesses. WIS. STAT. § 805.17(2). The court's order was founded on credibility, and it was entitled to believe Blake and his witness.

Brittany also argues that the circuit court improperly considered hearsay at the hearing. However, she fails to explain what role the alleged hearsay played in the circuit court's decision, and does not otherwise explain why the alleged hearsay was significant rather than harmless given the other testimony presented at the hearing and Brittany's concession that it would not matter if there was a restraining order since she did not want to have contact with Blake in any event. We will not abandon our neutrality to develop arguments. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

Brittany also suggests that the circuit court improperly limited her ability to present evidence at the hearing. She also claims that evidence was overlooked and not properly reviewed. She further argues, "I was unaware of when the proper time to present the evidence would be."

However, Brittany concedes, "I did, however, read aloud the letter I had [written] to the Judge and most of the papers I brought with me to Court that day, which was my provided evidence." In fact, during Blake's cross-examination, Brittany indicated to the circuit court, "I

have paper work for you.” The court advised, “You’ll be able to testify. Do you have any questions?” During her own testimony, the court asked Brittany:

Q: So what do you want to tell me today?

....

A: It’s a letter to you.

Q: Why don’t you just testify to it because Mr. Attoe has to be able to hear all of the evidence you present?

A: That’s fine....

Brittany also testified to numerous text messages from Blake. However, many if not all of the texts preceded the split in their relationship. The court also specifically asked Brittany on several occasions during her testimony if she had any further testimony. Brittany referenced a letter from Blake dated October 19, but the court noted the letter was “long before the two of you broke up?” Brittany eventually represented to the court that she had no further testimony or witnesses to present.

After the court’s decision, the following exchange occurred:

[Brittany]: Your Honor, is there any way in which you can see all of my papers or --

THE COURT: The time to have presented the proof was during trial.

[Brittany]: But I wanted to hand it to you.

THE COURT: Well, you wanted to hand me a letter you said.

[Brittany]: Well, I have all the proof too, I didn’t know --

THE COURT: So you have a bunch of stuff showing that you didn’t contact him after he said not to --

[Brittany]: Yeah.

THE COURT: -- contact you.

[Brittany]: Yeah. And I have a bunch of proof that he contacted me.

THE COURT: The trial is done. No, I don't need to see anymore. If you stay away from him, this doesn't cause you any consequence at all.

As the court indicated, Brittany's complaints following the decision were untimely. Regardless, she fails to explain how any purported proof would not have been duplicative of her testimony already in the record. *See State v. Street*, 202 Wis. 2d 533, 549, 551 N.W.2d 830 (Ct. App. 1996).

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals