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DISTRICT IV

July 12, 2017

To:

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Circuit Court Judge
Crawford County Courthouse
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Prairie du Chien, WI 53821

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Anjelica L. Pitzer

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

2016AP670 Anjelica L. Pitzer v. Kent N. Stark (L.C. # 2015CV107)

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

Kent Stark appeals a harassment injunction entered in favor of Anjelica Pitzer. As grounds for the injunction, the circuit court found that Stark had engaged in a course of conduct that constituted stalking under WIS. STAT. § 940.32 (2015-16).[1] Based upon our review of the

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

briefing[2] and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

To grant a harassment injunction, the circuit court must find "reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner." WIS. STAT. § 813.125(4)(a)3. Harassment includes stalking under WIS. STAT. § 940.32, or attempting or threatening to do the same. Section 813.125(1)(am).

As applied to this case, the elements of stalking are: (1) Stark intentionally engaged in a course of conduct directed at Pitzer; (2) Stark's course of conduct would have caused a reasonable person in Pitzer's position to suffer serious emotional distress or fear of bodily injury; (3) Stark's acts caused Pitzer to suffer serious emotional distress or fear of bodily injury; and (4) Stark knew or should have known that at least one of the acts constituting the course of conduct would cause Pitzer serious emotional distress or fear of bodily injury. *See* WIS. STAT. § 940.32(2); WIS JI—CRIMINAL 1284.

Following a hearing at which the circuit court heard testimony from four witnesses and reviewed several exhibits, the circuit court found reasonable grounds for an injunction under WIS. STAT. § 813.125. In making this determination, the court addressed all four of the elements of stalking under WIS. STAT. § 940.32. First, the court found that Stark had intentionally engaged in a course of conduct directed at Pitzer. Second, over time, Stark's conduct had become such that a reasonable person would suffer fear or emotional distress. Third, Stark's

[2] No respondent's brief was filed. Although this court may, under some circumstances, summarily reverse for failure to file a responsive brief, *see* WIS. STAT. § 809.83(2), this court's (continued)

conduct did induce fear in Pitzer. Fourth, Stark should have known his conduct would cause Pitzer emotional distress or place her in fear of Stark. Accordingly, the court granted the harassment injunction in favor of Pitzer. However, the court denied Pitzer's request for a firearm restriction, concluding that there was not clear and convincing evidence that Stark may use a firearm to cause physical harm to Pitzer.

Whether to grant an injunction is within the circuit court's discretion, and we review for a proper exercise of discretion. ***Welytok v. Ziolkowski***, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. We will uphold the circuit court's findings of fact unless they are clearly erroneous. ***Id.*** Whether those findings satisfy the applicable legal standard presents a question of law that we decide independently. ***Id.***, ¶28.

Stark argues that the circuit court's findings do not satisfy the legal standard for the second, third, and fourth elements. Specifically, he argues that the circuit court used the terms "emotional distress" and "fear" in making its findings, rather than the precise statutory terms "serious emotional distress" and "fear of bodily injury." We reject Stark's legal challenge for two reasons. First, immediately before making these findings, the circuit court used the complete, correct terms in discussing the elements of stalking. Because the court was aware of the elements of the crime of stalking, we can presume that it correctly applied the law. *See* ***Arave v. Creech***, 507 U.S. 463, 471 (1993). Second, Stark offers no support for his contention that express findings are required. To the contrary, absent an express factual finding, we may assume the circuit court made findings in a manner that supports its final decision. ***State v.***

October 11, 2016 order denied the appellant's motion for summary reversal based on the respondent's failure to file a brief.

Echols, 175 Wis. 2d 653, 673, 499 N.W.2d 631 (1993); ***Sohns v. Jensen***, 11 Wis. 2d 449, 453, 105 N.W.2d 818 (1960).

Stark's next argument is underdeveloped, but he begins by conceding that the circuit court's factual findings were not clearly erroneous. However, he argues that the fact that the circuit court did not impose a firearm restriction means that the court could not have also found that Pitzer had the requisite fear of bodily harm. This argument is a non-sequitur. The court's determination that the record lacked clear and convincing evidence that Stark would harm Pitzer with a firearm is a different question than whether there are reasonable grounds to believe that Pitzer feared bodily harm as a result of Stark's course of conduct. Stark has not offered any authority for his argument that these two determinations are inconsistent. To the contrary, the court explicitly noted that a different legal standard applied to the two determinations. Because these two determinations are not inconsistent and Stark has conceded that the court's factual findings were not clearly erroneous, we conclude that the court had grounds for issuing the injunction.

Notwithstanding the existence of proper grounds for an injunction, Stark argues that the circuit court had discretion over whether to issue the injunction in the first instance and that it erroneously exercised its discretion in doing so. Specifically, Stark contends that the court's misapplication of the law demonstrates an erroneous exercise of discretion. *See* ***Sullivan v. Waukesha County***, 218 Wis. 2d 458, 470, 578 N.W.2d 596 (1998). As explained above, we reject the argument that the court misapplied the law. Stark offers no other basis for his argument that the court erroneously exercised its discretion. We therefore sustain the circuit court's decision as one that was within its sound discretion to make. *See* ***Welytok***, 312 Wis. 2d 435, ¶24.

Lastly, Stark argues that the circuit court failed to exercise its discretion regarding the scope of the injunction because it did not state its reasons for ordering that it would be effective for four years. For this argument, Stark relies on ***McCleary v. State***, 49 Wis. 2d 263, 278, 182 N.W.2d 512 (1971), which is a decision about criminal sentencing. Assuming without deciding that ***McCleary*** applies to the length of a harassment injunction, we conclude that the circuit court properly exercised its discretion in this instance.

In ***McCleary***, the court stated that a circuit court's discretionary determination should not be set aside merely because a court did not expressly state its reasons. ***Id.*** at 282 Instead, the appellate court is "obliged to search the record to determine whether in the exercise of proper discretion the [court's decision] can be sustained." ***Id.*** Here, our review of the record shows that the circuit court was aware of the time frames at issue when it determined that the injunction would be effective for four years. The court demonstrated careful attention to the duration and the evolution of the parties' relationship. The court described in detail how Stark's behavior toward Pitzer had evolved over time. The court specifically noted that the relationship that had existed four years earlier was not the same relationship that had caused Pitzer to seek an injunction against Stark. In light of the length of the parties' relationship and the long-term evolution of Stark's conduct, we conclude that the four-year period for the injunction can be sustained as a proper exercise of the court's discretion. *See* ***State v. Taylor***, 2006 WI 22, ¶30, 289 Wis. 2d 34, 710 N.W.2d 466 ("***McCleary*** does not require a sentencing court to provide an explanation for the precise number of years chosen," so long as the record contains a rational and explainable basis).

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals