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DISTRICT IV

October 10, 2017

To:

Hon. Philip M. Kirk
Circuit Court Judge
Waupaca County Courthouse
811 Harding Street
Waupaca, WI 54981

Maxwell Charles Livingston
200 S. Exec Dr., Ste. 101
Brookfield, WI 53005

Petitioner

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:

2016AP2031

Petitioner v. Alan M. Frank (L.C. # 2016CV228)

Before Sherman, Blanchard and Kloppenburg, 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).

Alan M. Frank appeals a harassment injunction entered in favor of his ex-wife. The injunction provides that Frank “have no contact directly or indirectly with [his ex-wife’s] employer, supervisor, or any other employee for purposes of [his ex-wife’s] work performance.” Frank argues that this court should “overturn[.]” the injunction because evidence was improperly excluded at the hearing, the circuit court failed to consider the “legitimate reasons” for his behavior, and the order granted relief which was different than that requested in the petition.

Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm.

Frank's ex-wife petitioned for an injunction that would require Frank to "cease or avoid harassing the petitioner," and "avoid contact that harasses or intimidates the petitioner." The petition alleged that Frank had stalked and verbally threatened his ex-wife, and had harassed her at her place of employment, a medical clinic (hereafter, the clinic). At a hearing on the petition, the ex-wife explained that she was concerned about harassment "mostly pertaining to my job." She recounted an incident that occurred at the clinic while the parties' minor child underwent a CT scan. The ex-wife had planned to watch the procedure from a room behind the CT scan when Frank became angry and accused her of receiving "preferential treatment as an employee." Frank told the CT technologists he wanted to speak to their supervisors and demanded their supervisors' names and numbers.

The ex-wife told the techs not to engage Frank in further discussion and said she would leave the room to end the dispute. She went into the waiting area. Frank followed behind and asked if she was there on company time. He insinuated that his ex-wife's job "was going to be severely in jeopardy because of this" and asked for her supervisor's information, which she provided.

Frank left the area and contacted his ex-wife's supervisor because he felt he "wasn't getting equal treatment in the clinic." In a meeting with her supervisors, he suggested that his ex-wife had improperly accessed his medical chart and that the clinic had improperly provided

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

free medical care to the parties' minor child. Based on Frank's statements, the clinic conducted an audit to make sure the ex-wife had not accessed his medical records and that the minor child had not received undocumented medical care.

The ex-wife testified that after meeting with Frank, her supervisors called her in to discuss the situation. According to the ex-wife, they suggested that she pursue an injunction and told her this was not the first time Frank had called to request that "investigations be done." One supervisor told her that Frank had called for a third time that day, "this time ... to inquire why [the supervisor] was friends with [the ex-wife] on Facebook." Frank did not dispute this account in any material way. He explained that while driving home, he started thinking about how his ex-wife is "friends with everybody in that clinic" and that if she was friends with the supervisor in charge of investigating his complaints, "there might be a bias." Frank testified that he thought: "Maybe somebody else should look into this, because my previous attempts at having a thorough investigation in my opinion as to the records violations were not sufficient." He acknowledged having asked his ex-wife if she was "on the clock" and for her supervisor's name before he left the room to contact her supervisor.

The circuit court determined that the ex-wife had demonstrated her entitlement to an injunction, and that there was "absolutely no socially redeeming purpose that can justify [Frank's] behavior vis-à-vis his ex-spouse and her employment." The court characterized Frank's complaints to his ex-wife's supervisors as selfish, silly, and "without merit." The circuit court emphasized, however, that it would afford "very limited" relief and that it did not intend for its order to interfere with any pre-existing family court order. The court stated:

So, my order is going to be that the respondent is prohibited from contacting the petitioner's employer for any reason whatsoever

concerning the petitioner's performance of her job or employment at her employer.

The court reminded the ex-wife that Frank had "as much right to know about what type of care is being provided to his child as you do," and that it would not be a violation of the injunction if Frank contacted the clinic to ask about the care being provided to their daughter or to ask about his own health records. Frank appeals.

Under WIS. STAT. § 813.125(4)(a)3., a circuit court may grant an injunction ordering the respondent to cease or avoid harassing or contacting the petitioner if it finds "reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner." Whether or not to grant an injunction is a discretionary determination for the circuit court. *Welytok v. Ziolkowski*, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. In reviewing the circuit court's decision for an erroneous exercise of discretion, "[w]e look for reasons to sustain [its] discretionary ruling." *Board of Regents-UW Sys. v. Decker*, 2014 WI 68, ¶19, 355 Wis. 2d 800, 850 N.W.2d 112.

On cross-examination, the ex-wife testified that Frank told her you can "kiss your job good-bye." Frank then asked the circuit court: "Your Honor, could I supply you with an electronic audio of that event she's speaking of?" The court said "No." Frank contends that the injunction should be reversed because the circuit court denied his request without explanation. We disagree. Though he now argues that the court was required to explain its reasoning, Frank did not contemporaneously request further explication or preserve an objection to the ruling, nor did he renew his request to play the recording during his direct examination. *See State v. Delgado*, 2002 WI App 38, ¶12, 250 Wis. 2d 689, 641 N.W.2d 490 ("We have long held that a specific, contemporaneous objection is required to preserve error."). Additionally, Frank does

not explain how or why the circuit court's ruling was in error. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals "may decline to review issues inadequately briefed"). Finally, to the extent Frank now complains about the admission of alleged hearsay during his wife's testimony, he did not object at the hearing and the issue is forfeited. *See State v. Perry*, 215 Wis. 2d 696, 704, 573 N.W.2d 876 (Ct. App. 1997) ("The well-settled rule in Wisconsin is that failure to object to an error at trial generally precludes a defendant from raising the issue on appeal." (quoted source omitted)).

Frank's second complaint appears to be that the circuit court did not consider his legitimate reasons for complaining about his ex-wife to her employer. We are not persuaded. The record shows that the circuit court did consider Frank's proffered reasons for complaining to his ex-wife's supervisors but determined they were not legitimate. There was no evidence supporting Frank's claims that his ex-wife was improperly accessing his medical records, and it was within the court's discretion to determine that, despite Frank's concerns about his ex-wife's "preferential treatment," his conduct did not serve a legitimate purpose. The circuit court's narrowly tailored injunction prohibits only inappropriate conduct that serves no legitimate purpose, and does not limit Frank's ability to participate in his child's medical care.

Finally, Frank argues that "the circuit court improperly entered an order not requested in petitioner's petition." In his two-paragraph argument, he asserts that his ex-wife's petition "focuses on safety and does not request the injunction ultimately ordered." Frank is mistaken. The injunction petition clearly requested that Frank be ordered to "avoid contact that harasses or intimidates the petitioner," with "contact" being specifically defined to include "contact at petitioner's ... work." More significantly, the petition's attachment highlighted the incident at

the ex-wife's work. It was recounted in precise detail and was sufficient to put Frank on notice that his ex-wife wanted to prevent further harassment at the clinic.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court 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