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DISTRICT III

March 17, 2020

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

2018AP2078

Petitioner v. Foley P. Quinn, Sr. (L. C. No. 2018CV100)

Before Stark, P.J., Hruz and Seidl, 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).

Foley Quinn appeals from a domestic abuse injunction. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we affirm. *See* WIS. STAT. RULE 809.21 (2017-18).¹

The circuit court granted a temporary restraining order based on allegations of domestic abuse against his now ex-wife. The order also scheduled an injunction hearing for

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

September 11, 2018, and ordered that “Service of this notice and order shall be made at least 48 hours prior to the hearing.” A copy of the order was personally served upon Quinn on September 8, 2018.

On September 10, 2018, Quinn, pro se, filed a motion for a continuance. Quinn’s motion stated that he was “served with notice to appear on sept 8th @ 9:15 PM,” and was “able to retain Attorney Mark Biller and due to the late notice he has a conflict with the time.”

Quinn appeared at the injunction hearing, and the matter proceeded without Quinn objecting or requesting that the matter be adjourned. Quinn’s then-wife testified at the injunction hearing that the couple had previously separated and were living in separate dwellings. Due to Quinn’s “increasingly aggressive behavior,” she “decided it was probably time to file a petition for divorce, so I did meet with counsel and had those papers drawn up” She also informed the couple’s daughter of this development. Later, the ex-wife was in the shower when she heard the dog barking. She then noticed Quinn had pulled into the driveway. Quinn entered the house, spoke to their daughter, then exited the house and went into the garage. She went outside to speak to him. Quinn was “going through things in the garage,” and he said he was “going to just take everything out of there.” Quinn was “very agitated” and “he refused to leave” when requested to do so.

Quinn’s ex-wife testified that Quinn then asked her if she had informed their daughter of the divorce filing, and at that point Quinn “rushed past me, went into the house, slammed and locked the door behind him and locked me out, and I heard him screaming at our daughter.” Eventually, their daughter “did escape the house and get the door open.” She testified Quinn continued to yell at their daughter, “calls her names, called her an idiot”

Quinn's ex-wife testified Quinn "was kind of running back and forth between throwing stuff from the garage into his trailer and pickup truck." She stated:

[Quinn] proceeds to grab my right arm and twist me to the side and slam me onto the front passenger side floor of his truck. I try to get up, and he slams me down again, and then he has his phone above me as if he is either videoing or taking pictures, saying she is breaking into my truck. I try to get up at least a third time. He slams me down again.

The ex-wife further testified that Quinn's actions caused her physical injury and pain, and a photograph was entered into evidence depicting bruises on her right leg.

Quinn proceeded with cross-examination. At one point, the circuit court asked, "Mr. Quinn did you cause these bruises to your wife?" Quinn initially testified, "I don't know if I did," but then Quinn stated, "I did not." The court asked Quinn if he could provide "some plausible explanation to say these were—were not caused by you?" Quinn contended, "[She] went—broke into my truck and took the keys out of the ignition" The court then asked Quinn, "You pushed and shoved over a set of car keys in a truck?" Quinn answered, "Yes, Your Honor." Quinn was also asked, "You may have caused the bruises?" Quinn answered, "Yes."

The circuit court granted the injunction. The court found "the only plausible explanation for this is what she gave me, and that's that he pushed her into the truck and bruised her, and that's what domestic abuse is."

Quinn argues his motion for a continuance "was improperly denied as Mr. Quinn did not have adequate notice of the [injunction] hearing, nor time to hire an attorney." Quinn principally relies upon WIS. STAT. § 801.15(1)(b) regarding the computation of time in instances when the period of time prescribed or allowed is less than eleven days. However, Quinn forfeited this

issue by making an appearance at the injunction hearing and going forward without making an objection to personal jurisdiction or arguing defective service. See *Lees v. DILHR*, 49 Wis. 2d 491, 499, 182 N.W.2d 254 (1971). In fact, at the hearing, it was not until after the circuit court granted the injunction that Quinn raised any issue with being “served late.” Moreover, there is nothing in the record on appeal to establish that Quinn in fact retained an attorney, or that the attorney was not available for the injunction hearing. Under these circumstances, we cannot conclude that the circuit court erroneously exercise its discretion by denying the request for a continuance. See *State v. Leighton*, 2000 WI App 156, ¶27, 237 Wis. 2d 709, 616 N.W.2d 126.

Quinn also argues the circuit court “did not provide a fair hearing.” Quinn contends the court “decided the case without hearing from both parties.” This contention is conclusory as Quinn fails to indicate what evidence he was prevented from introducing at the injunction hearing, or how he was prejudiced in that regard. Regardless, the record discloses that Quinn was provided a fair hearing, at which he admitted that he pushed and shoved his then-wife and that he may have caused her bruises. To the extent Quinn asserts the court was not impartial, the record fails to support this serious allegation.²

² Quinn contends the circuit court “had presided at a bond hearing for the criminal case alleging the same facts as this hearing against Mr. Quinn” Although Quinn concedes “there is no 5th amendment right to silence in a civil hearing,” he contends without citation to legal authority that “the criminal case is uniquely intertwined with the allegations in the injunction hearing.” In any event, Quinn failed to invoke a Fifth Amendment right at the injunction hearing, and we will not further address the issue. We also note that Quinn’s brief’s appendix does not contain “the findings or opinion of the circuit court,” as required by WIS. STAT. RULE 809.19(2)(a). The appendix merely contains two documents purporting to be “CCAP Records” that were not part of the record in this matter. Counsel is admonished that future violations of the rules of appellate procedure may result in sanctions.

Therefore,

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

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

Sheila T. Reiff
Clerk of Court of Appeals