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DISTRICT I

September 29, 2020

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

2019AP1312 Petitioner v. Jeremiah Collins, Sr. (L.C. # 2019CV1077)

Before Dugan, Donald and White, 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).

Jeremiah Collins, Sr., *pro se*, appeals a circuit court order granting a harassment injunction against him. He claims that the circuit court was biased against him and that the evidence was insufficient to support the order. 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 (2017-18).[1] We summarily affirm.

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

On February 8, 2019, Petitioner filed a petition seeking a harassment injunction against Collins, her estranged husband. Petitioner alleged that Collins "posts about her on the internet and sends group message[s] about [her]," and that "[i]n the past year [he] has nonstop texted, called, and emailed [her]." The circuit court held a hearing over two days and determined that Collins's repeated threats to make public a video recording of the Petitioner performing sexual acts constituted harassment and warranted imposing a harassment injunction for a four-year term.

Collins first claims that the circuit court was biased against him and should have granted his motion for recusal. We are not persuaded.

Collins moved the circuit court to recuse itself at the outset of the hearing on the ground that, while presiding in a divorce hearing involving the same parties, the circuit court had described him as "stalkerish." In response to the motion, the circuit court acknowledged that it "refer[red] to [Collins's] behavior as stalkerish in the context of hoping that [he] would focus on his children rather than on the guardian *ad litem* in the family court case." The circuit court went on to find, however, that it could listen to the evidence that both parties presented and determine whether Petitioner met her burden of proof. The circuit court therefore denied the motion.

A claim of judicial bias involves both a subjective test and an objective test. *See* ***State v. Rochelt***, 165 Wis. 2d 373, 378, 477 N.W. 2d 659 (Ct. App. 1991). A determination by the circuit court that it is not biased is sufficient to satisfy the subjective test. *See* ***id.*** at 379. The circuit court made that determination here, so further inquiry into the subjective test is not required.

As to the objective test, a party claiming judicial bias can prevail only by showing either actual or apparent bias. *See* ***State v. Gudgeon***, 2006 WI App 143, ¶21, 295 Wis. 2d 189, 720 N.W.2d 114. When we review the claim on appeal, we presume that a judge is "fair, impartial, and capable of ignoring any biasing influences." *See* ***id.***, ¶20. Opinions formed by a judge based upon facts introduced or events occurring during the course of a current or prior proceeding involving a party "'do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.'" *See* ***State v. Rodriguez***, 2006 WI App 163, ¶36, 295 Wis. 2d 801, 722 N.W.2d 136 (citation omitted). Collins has not made the required showing here.

Collins first supports his claim of judicial bias by describing several alleged occurrences in the divorce case that he suggests reveal the circuit court's hostility toward him. The proceedings he describes, however, are not part of the record of the harassment litigation. "We are bound by the record as it comes to us," and we assume that anything missing from the record would support the circuit court's ruling. *See* ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). Accordingly, we have not considered Collins's allegations about events in the divorce litigation that are not contained in the record of the harassment proceeding before us.[2] The sole allegation supported in the record is that the circuit court concededly described Collins's behavior as "stalkerish" during a hearing in the divorce proceeding. When Collins complained about that incident in the instant case, however, the

[2] A party's "appendix may not be used to supplement the record." *See* ***Reznicheck v. Grall***, 150 Wis. 2d 752, 754 n.1, 442 N.W.2d 545 (Ct. App. 1989). By order dated November 5, 2019, we rejected the appendix that Collins submitted with his appellant's brief because the appendix contained documents that were not part of the circuit court record in the instant harassment litigation.

circuit court explained the surrounding facts and ruled that it could continue to preside. Because the divorce transcripts are not part of the instant record, we presume that they support the circuit court's determination. *See* ***id.***

Second, Collins relies on the circuit court's rulings during the course of the harassment hearings to demonstrate the circuit court's bias against him. He asserts that the circuit court's evidentiary rulings reflected favoritism towards Petitioner and her counsel, and in support he describes rulings where he perceives that the circuit court resolved similar evidentiary questions differently depending on the proponent of the evidence.[3] A circuit court has broad discretion, however, in determining the relevance and admissibility of evidence, *see* ***State v. Weed***, 2003 WI 85, ¶9, 263 Wis. 2d 434, 666 N.W.2d 485, and a circuit court's decisions reflect a proper exercise of discretion if they "have a reasonable basis and are made in accord with the facts of record," *see* ***State v. Thiel***, 2004 WI App 225, ¶26, 277 Wis. 2d 698, 691 N.W.2d 388. Collins's complaints about the circuit court's rulings do not develop a legal argument showing that any of those rulings reflect an erroneous exercise of discretion. "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." ***Liteky v. United States***, 510 U.S. 540, 555 (1994). In the absence of an analysis demonstrating that the circuit court erroneously exercised its discretion here, we reject Collins's allegations of disparate rulings as a basis for a claim of judicial bias.

[3] For example, he complains that the circuit court "allowed [P]etitioner to introduce audio and video evidence but did not allow Mr. Collins to do the same"; and that the circuit court was inconsistent about the time periods that it viewed as relevant to the allegations.

Third, Collins complains that the circuit court did not treat him in the same way that it treated Petitioner's counsel. In his view, the circuit court interrupted only him, improperly sought information from Petitioner's counsel, and ignored his arguments. A circuit court judge is required, however, to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to … [m]ake the interrogation and presentation effective for the ascertainment of the truth[,] … [a]void needless consumption of time[,]" and "[p]rotect witnesses from harassment or undue embarrassment." WIS. STAT. § 906.11. Moreover, a circuit court's "ordinary efforts at courtroom administration ... remain immune" from claims of bias. *See* ***Liteky***, 510 U.S. at 556. Our review of the transcripts satisfies us that the circuit court took the steps necessary to manage the proceedings so as to ensure an efficient resolution of the dispute. Accordingly, we do not agree that the circuit court's courtroom management supports a claim of judicial bias.

Finally, Collins complains about the actions of courthouse staff, and he offers a description of his interaction with a bailiff who Collins alleges demonstrated bias against him. The alleged occurrence, however, is not reflected in the record and therefore cannot support a claim for relief. *See* ***Fiumefreddo***, 174 Wis. 2d at 26-27. We add that, if Collins believed that courthouse personnel treated him unfairly, his recourse was to raise the issue with the circuit court so that it could address the alleged mistreatment. Collins, however, does not point to anything in the record showing that he took such a step. We do not consider matters presented for the first time on appeal. *See* ***Shadley v. Lloyds of London***, 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838.

In sum, the record does not support a claim that the circuit court was biased against Collins. Accordingly, we reject this basis for relief.

Collins also argues that the evidence did not support the circuit circuit's decision to grant a harassment injunction. We disagree.

Pursuant to WIS. STAT. § 813.125, a circuit court may grant a harassment injunction if the circuit court "finds reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner." *See* § 813.125(4)(a)3. As relevant here, the statute defines harassment as "[e]ngaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose." *See* § 813.125(1)(am)2. Whether conduct constitutes harassment is a question of law that we review *de novo*. *See* ***Welytok v. Ziolkowski***, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. The decision to grant an injunction, however, rests in the circuit court's discretion. *See* ***id***. "We may not overturn a discretionary determination that is demonstrably made and based upon the facts of record and the appropriate and applicable law." ***Id.***, ¶24. In assessing whether the circuit court properly exercised its discretion, we will not disturb the circuit court's findings of fact unless they are clearly erroneous, and we defer to the circuit court's credibility assessments. *See* ***id.***, ¶28. We search the record for reasons to uphold a circuit court's discretionary decision. *See* ***id.***, ¶24.

In this case, Petitioner testified about many incidents that she viewed as harassing, and the circuit court characterized the bulk of these as either "name calling," "profanity," "childish allegations," or "vulgarity." The circuit court indicated that it had discounted these incidents, explaining that it was not confident that they amounted to harassment.

The circuit court then considered Petitioner's testimony and evidence that Collins made a series of threats to publicize a video recording of Petitioner engaged in sexual acts. The circuit

court found that one such threat was a text message to Petitioner threatening to send the video "to everyone [Collins] know[s], including family." A second text message threatened "to play the sex tape at the trial." A third text message threatened the Petitioner that the image of her performing sexual acts "is going to end [her]." A fourth text message was a threat to send Petitioner's boyfriend the audio recording of Petitioner engaging in sexual acts. A fifth was a "threat to send a sex video to the boyfriend," and a sixth was "yet another threat to send a screen shot of a sexual act to the boyfriend." A final text was an image of the disc containing the sexual content, which, the circuit court found, "appears [to have been] sent to the public on Facebook."

The circuit court considered but rejected Collins's contention that he "didn't do all this." The circuit court explained: "I found your testimony that you didn't send these text messages to not be reliable, Mr. Collins, because it's your phone number, it says "Jeremiah," and you are talking about the case and you are talking about your kids." The circuit court further found: "it's pretty clear that it is you who sent these things and who threatened to make these things public." The circuit court was in the best position to assess witness credibility, and we accept the circuit court's assessment. *See* ***Welytok***, 312 Wis. 2d 435, ¶37.

The circuit court next found that Collins's threats to publicize sexually explicit material "w[ere] not a one-time thing," were "clearly harassing in nature and serve[d] no legitimate purpose." These findings are supported by the record. Repeated conduct "'to vex, trouble, or annoy'" another person is harassing behavior, as are actions "'to plague, bedevil or badger.'" *See* ***id.***, ¶35 (citation omitted). The evidence showed that Collins's threats were ongoing, and he acknowledged at trial that he acted to "jab at" and "badger[]" Petitioner. Because the circuit court's findings are not clearly erroneous, we will not disturb them. *See* ***id.***, ¶23.

In light of the evidence that the circuit court believed, it concluded that Collins engaged in harassment within the meaning of WIS. STAT. § 813.125. The circuit court then imposed a four-year harassment injunction.

Upon our *de novo* review, we conclude that the facts found by the circuit court plainly constitute harassment. The evidence showed that Collins repeatedly threatened to publish and broadcast images of Petitioner engaged in sexual conduct. The record does not suggest any legitimate purpose for his conduct but rather reflects that he acted to trouble and annoy the Petitioner. Accordingly, he engaged in harassment within the meaning of WIS. STAT. § 813.125.

On appeal, Collins emphasizes that the circuit court resolved the dispute without watching either the video of Petitioner allegedly engaged in sexual acts or the other videos of Petitioner that he wanted to present. He argues that if the circuit court had watched the sexual content and considered the reasons that the video was recorded, the circuit court would have concluded that "it was [Petitioner] in fact who was the initiator of the harassment in [the parties'] relationship."

Collins's contentions do not provide a basis for relief. The circuit court acknowledged Collins's allegations that Petitioner engaged in harassing behavior, but the circuit court explained that it "did not need to see [Collins's] recordings of bad behavior by [Petitioner] because it's possible in a relationship that two people can engage in harassing behavior. It's not a defense to say, 'she harasses me too.'" Collins fails to offer any legal authority demonstrating that the circuit court's explanation was wrong. We decline to develop an argument for him. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

Moreover, in this court Collins states that the sexual video was recorded during the parties' marriage, and he then asserts: "Collins used the threat of [the video] more than a year later to upset [Petitioner], yes. Is that justifiable? Perhaps not. But when understood within context, it certainly makes it much more understandable." Collins thus acknowledges that he intended to vex or trouble Petitioner with his repeated threats to broadcast the video, in effect conceding that his actions constituted harassment. *See* ***Welytok***, 312 Wis. 2d 435, ¶35. At the same time, he fails to offer any cognizable legal argument that rendering such conduct "more understandable" would somehow demonstrate that the evidence was insufficient to prove either a violation of WIS. STAT. § 813.125, or the need for injunctive relief.

The circuit court determined that Collins's harassment of Petitioner warranted an injunction. In making that decision, the circuit court considered the evidence, applied the applicable law, and reached a reasonable conclusion. Accordingly, we are satisfied that no basis exists to disturb the circuit court's exercise of discretion. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981) (our inquiry is whether the circuit court exercised discretion, not whether the circuit court could have exercised discretion differently). For all the foregoing reasons, we affirm.

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

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

Sheila T. Reiff
Clerk of Court of Appeals