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DISTRICT IV

March 18, 2021

To:

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John Gruber

Michael S. O'Grady

Jerry Simonson

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

2019AP1350 Portage Community School District v. Michael S. O'Grady
(L.C # 2019CV41)

Before Fitzpatrick, PJ, 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).

Michael O'Grady appeals a harassment injunction against him. 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 (2019-20).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

The petition for the harassment injunction was filed by the school board clerk, Matt Foster, on behalf of the Portage Community School District and others, and named O'Grady as respondent. The circuit court held an evidentiary hearing and granted the petition.

O'Grady first argues that the circuit court lost competency to proceed on the petition because O'Grady was not served with a form CV-449, which is a notice and order for injunction hearing when a temporary restraining order is not issued. O'Grady argues that the court lost competency because, by not using that form, the court failed to fulfill a mandatory statutory requirement that is central to the statutory scheme. O'Grady also appears to be suggesting that the absence of that form deprived the court of subject matter and personal jurisdiction.

A harassment injunction action may be commenced by filing a petition. WIS. STAT. § 813.125(2)(a). The action commences with service of the petition upon the respondent if a copy of the petition is filed in court before service or promptly after service. ***Id.*** O'Grady is not arguing that he was not served with the petition, only that he was not also served with the form. However, O'Grady does not cite any statute requiring use of form CV-449, or the issuance of a notice of that type. Accordingly, O'Grady's argument fails to establish that an error occurred.

O'Grady next argues that the petitioners defaulted in prosecuting the petition because Foster, who signed the petition, did not appear at the hearing. O'Grady does not cite any law that requires the signer of a petition on behalf of an organization to attend the hearing. Nor does he point to any court order that required Foster to attend the hearing. There is no merit to this argument.

O'Grady next argues that service of the petition on him by the sheriff in this case was not proper under WIS. STAT. §§ 59.27(9) and 801.10(1) because the sheriff should be considered a

party to this action. This argument fails because the sheriff is not a party to this case, although he may have been a party in another case involving O'Grady.

O'Grady next argues that the circuit court erred by finding that the acts of O'Grady that it found to be harassment served no legitimate purpose. O'Grady argues that the acts were instead constitutionally protected speech. However, O'Grady does not support this argument with a developed analysis that discusses the interplay of harassment injunctions and constitutional law or explain how legal authority supports his position.

O'Grady next argues that the testimony of certain school district employees should be stricken from the record due to "lack of standing to testify," because it was Foster who signed the petition for the injunction, and who thus became the only person to speak for the district. This argument fails because O'Grady does not provide any legal authority in support of this argument.

O'Grady argues that exhibits submitted by the school district at the hearing were inadmissible because he was unconstitutionally deprived of his right to review this material before the hearing and was not permitted to engage in pretrial discovery. However, O'Grady does not develop a legal argument on this point, and does not show that he made such an objection in circuit court or requested discovery. *See* ***Schwittay v. Sheboygan Falls Mut. Ins. Co.***, 2001 WI App 140, ¶16 n.3, 246 Wis. 2d 385, 630 N.W.2d 772 (stating that "[a] party must raise an issue with sufficient prominence that the [circuit] court understands that it is called upon to make a ruling").

To the extent O'Grady may also be making other arguments, they are not sufficiently developed or coherent to require or permit a more specific response. *See* ***State v. McMorris***, 2007 WI App 231, ¶30, 306 Wis. 2d 79, 742 N.W.2d 322 (court of appeals "may choose not to

consider arguments unsupported by references to legal authority [and] arguments that do not reflect any legal reasoning"). In addition, some of these undeveloped arguments are raised for the first time in his reply brief. *See* ***Bilda v. County of Milwaukee***, 2006 WI App 57, ¶20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661 ("It is a well-established rule that we do not consider arguments raised for the first time in a reply brief.").

Jerry Simonson also filed a notice of appeal in this case. The injunction issued in this case appears to have been against only O'Grady. Before that, Simonson filed a motion to intervene in the case. The circuit court denied that motion because Simonson failed to appear at the hearing. The brief before us does not make any argument that Simonson should have been allowed to intervene, and therefore we do not discuss that order further.

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals