OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

November 10, 2021

To:

Hon. Anthony G. Milisauskas
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County
Electronic Notice

Robert N. Meyeroff
Electronic Notice

Joseph Perone

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

2020AP187 Petitioner v. Joseph Perone (L.C. #2018CV1283)

Before Gundrum, P.J., Reilly and Grogan, 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).

Joseph Perone appeals pro se from a circuit court order denying him relief from a WIS. STAT. § 813.12 (2017-18)[1] domestic abuse injunction entered 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). We affirm.

A court commissioner granted the petitioner's WIS. STAT. § 813.12 domestic abuse injunction, and Perone sought a hearing de novo pursuant to WIS. STAT. § 813.126(1). The

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

de novo hearing was adjourned from the first date because Perone's counsel had not yet received transcripts of the proceedings before the court commissioner. When the parties appeared for the second scheduled de novo hearing, Perone again sought an adjournment on the same grounds. The circuit court denied the request because the petitioner had twice appeared for the de novo hearing and wanted the hearing to proceed. After taking evidence, the circuit court entered an order denying Perone relief from the injunction entered against him. Perone appeals pro se.

On appeal, Perone argues that the evidence was not sufficient to issue the domestic abuse injunction, his counsel was ineffective at the de novo hearing, the circuit court should have adjourned the de novo hearing, and the circuit court erroneously denied his motions to reconsider.

Whether to grant or deny an injunction is discretionary with the circuit court and "should only be reversed upon an erroneous exercise of discretion." ***Sunnyside Feed Co., Inc. v. City of Portage***, 222 Wis. 2d 461, 471, 588 N.W.2d 278 (Ct. App. 1998). The circuit court "is the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness's testimony." ***State v. Peppertree Resort Villas, Inc.***, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345 (citation omitted). We will sustain the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2).

A domestic abuse injunction may be issued if the court "finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner." WIS. STAT. § 813.12(4)(a)3. As relevant here, "domestic abuse" is defined as "[i]ntentional infliction of physical pain, physical injury or illness," § 813.12(1)(am)1., or a threat to engage in such conduct, § 813.12(1)(am)6.

"Reasonable grounds" means "more likely than not that a specific event has occurred or will occur." Sec. 813.12(1)(cg).

Perone argues that the petitioner was not credible, and the evidence was not sufficient to support the injunction. At the hearing de novo, the circuit court heard testimony from the petitioner about Perone's conduct toward her; Perone denied all of the violent conduct and threats she described. The circuit court found the petitioner credible[2] and Perone not credible. We are bound by the circuit court's credibility determinations. ***Peppertree Resort Villas***, 257 Wis. 2d 421, ¶19. Based on the evidence before the circuit court, the court found that there were at least three different incidents of domestic abuse that satisfied the statutory definition in WIS. STAT. § 813.12(1)(am)1. (intentional infliction of or threat of physical pain or injury): (1) Perone banged the petitioner's head against a garage door, injuring her; (2) Perone kicked the petitioner in the head and stomach while wearing his work boot; and (3) Perone kicked a chair causing the petitioner to hit a wall with her head (Perone also kicked her in the genital area with his work boot).[3] The petitioner experienced pain in each incident. The court noted Perone's prior guilty plea to disorderly conduct (domestic abuse) and that he violated a bond condition by having contact with the petitioner after a domestic abuse arrest. We conclude that the circuit court's findings of fact are not clearly erroneous and support the domestic abuse injunction..

[2] The circuit court found the petitioner credible even though she admitted that on certain occasions when her children called police in response to Perone's violence, she lied to police and did not tell them that Perone had been violent toward her. She also conceded that in the aftermath of another assault, she lied to an emergency room physician because Perone was in the room at the time, and she was never alone with the physician.

[3] The petitioner also testified about another incident in which Perone pushed her around on the stairs and threatened to kill her. He also threatened her by e-mail and telephone calls from jail.

Perone argues that his counsel was ineffective at the de novo hearing because certain evidence was not presented. As the circuit court recognized when it rejected this claim in Perone's second motion for reconsideration, there is no constitutional right to counsel in a civil matter and therefore there is no related right to the effective assistance of counsel. *See* ***Village of Big Bend v. Anderson***, 103 Wis. 2d 403, 405, 308 N.W.2d 887 (Ct. App. 1981); ***State v. Krause***, 2006 WI App 43, ¶11, 289 Wis. 2d 573, 712 N.W.2d 67. We address this claim no further.

We turn to Perone's complaint that the circuit court erred when it did not adjourn the de novo hearing. Whether to adjourn the de novo hearing was discretionary with the circuit court. *See* ***Rechsteiner v. Hazelden***, 2008 WI 97, ¶28, 313 Wis. 2d 542, 753 N.W.2d 496; *see* ***Rupert v. Home Mut. Ins. Co.***, 138 Wis. 2d 1,7, 405 N.W.2d 661 (Ct. App. 1987) (a circuit court has discretion to control its docket). The circuit court found that the absence of transcripts did not establish good cause to adjourn the hearing, the petitioner had traveled a distance to appear for two prior de novo hearings,[4] and the petitioner wanted to proceed. The circuit court considered appropriate factors in declining to adjourn. *See* ***Rechsteiner***, 313 Wis. 2d 542, ¶93 ("the length of the delay requested;" "whether other continuances had been requested and received;" "the convenience or inconvenience to the parties, witnesses, and the court;" and "whether the delay seems to be for legitimate reasons"). The record shows a proper exercise of discretion in denying Perone's request to adjourn the de novo hearing.

[4] The first hearing on January 8, 2019 was adjourned because even though the petitioner appeared, the petition had not been properly served with the de novo request. The second hearing scheduled for January 31 was adjourned due to lack of transcripts. On the third hearing date, February 25, Perone sought another adjournment, which the circuit court denied.

Finally, we address Perone's argument that the circuit court erroneously denied his motions for reconsideration as untimely. The de novo hearing was held on February 25, 2019, and the order denying relief from the injunction was entered on December 10, 2019. A WIS. STAT. § 805.17(3) motion for reconsideration was due within twenty days after entry of the December 10 order. ***Id.*** Motions for reconsideration were filed on the following dates: January 7, 2020, February 19, 2020 and February 24, 2020. The circuit court correctly denied all of them as untimely filed.[5]

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2019-20).

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

Sheila T. Reiff
Clerk of Court of Appeals

[5] In his reply brief, Perone argues that he filed an affidavit of mailing indicating that he mailed the motion for reconsideration on December 26, 2019. The clerk of circuit court filed the motion on January 7, 2020. While his appellant's brief discusses ***State ex rel. Shimkus v. Sondalle***, 2000 WI App 262, ¶2, 240 Wis. 2d 310, 622 N.W.2d 763 (rules relating to mailing items from a correctional facility), Perone does not show this court that he raised this issue with the circuit court. *See* ***Shadley v. Lloyds of London***, 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838 ("It is well-established law in Wisconsin that those issues not presented to the trial court will not be considered for the first time at the appellate level.").