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DISTRICT I

October 4, 2022

To:

Hon. William Sosnay
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Appeals Processing Division
Electronic Notice

Jeffrey W. Jensen
Electronic Notice

Basil M. Loeb
Electronic Notice

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

2021AP1641 Petitioner v. Devin Chehin (L.C. # 2021CV2696)

Before Brash, C.J., Dugan 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).

Petitioner, *pro se*, appeals from an order dismissing her petition for a harassment injunction. 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(1) (2019-20).[1] We affirm.

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

Background

In May of 2021, Petitioner sought a restraining order and harassment injunction against Devin Chehin. A court commissioner issued a temporary restraining order and a contested hearing followed. The court subsequently concluded that Petitioner failed to meet the burden of proof for harassment and dismissed the case.

Petitioner sought *de novo* review, and appeared *pro se* at the hearing that followed. At the start of the hearing, Petitioner requested an adjournment in order to retain counsel and to issue subpoenas.

The circuit court noted that Petitioner's prior counsel withdrew nearly a month earlier. The parties and the circuit court then discussed some of the history between Petitioner and Chehin, which included a 2018 domestic abuse injunction action, among other matters. The circuit court never ruled on the adjournment request and instead indicated that Petitioner could proceed if she wished. The circuit court stated it would take judicial notice of events that had occurred in the past but would not relitigate what was previously litigated. The circuit court then told Petitioner to focus on the events that had recently occurred.

Petitioner's son testified that he knew Chehin because Chehin dated Petitioner for a couple of years. Petitioner's son claimed that Chehin made numerous calls to Petitioner. He indicated that the calls began in December 2017 and the last call they received from Chehin's number was in April 2021. Petitioner's son never answered any of the calls purportedly made by Chehin.

At the end of Petitioner's son's testimony, Chehin moved the court to dismiss the petition. The circuit court made findings and ruled that Petitioner had not met her burden of proof and denied the injunction. The circuit court specifically found: "[Petitioner's] phone number received calls on or about … February of 2021, a call on February 13th, one in March of 2021, and two or three calls in April of 2021, purportedly coming from the respondent. Neither [Petitioner] nor [Petitioner's son] spoke to the caller." The circuit court noted that no additional calls appeared to have been made since that time. After reviewing WIS. STAT. § 813.125, the circuit court concluded the Petitioner had not met her burden.

Petitioner then stated that she wanted to question Chehin. The circuit court indicated it would reopen the matter and would allow Petitioner to question Chehin about the phone calls that took place in February, March, and April of 2021.

During his testimony, Chehin admitted that he called the number several times. When asked why he made the calls, Chehin explained:

> I had received multiple phone calls from a 414 Wisconsin number, and at the time we were in the middle—or in between court hearings, I would be dealing with multiple attorneys' offices, child support services, all revolving around cases involving [Petitioner]. And I received phone calls that I did not answer and I returned them to promptly follow up with any additional hearings, actions, anything that—that would come up.
>
> I was not aware at the time that the 414 number that I was calling belonged to [Petitioner]. As [Petitioner] has stated earlier, she had changed her phone number and there was no way that anybody else knew it because it was only accessible to very few people.

Chehin testified that each call he made was preceded by a call from the Wisconsin number to his phone.

Following Chehin's testimony, the circuit court stood by its original findings and granted Chehin's motion to dismiss. The circuit court found that the phone calls were made over a period of months and were not of a frequency that constituted harassment.

Discussion

On appeal, Petitioner argues that the injunction petition should not have been dismissed. Alternatively, she contends that the circuit court should not have limited her presentation of evidence and should have granted her request for an adjournment.

Governed by WIS. STAT. § 813.125, courts have the power to issue harassment restraining orders and injunctions when the statutory criteria are met. We review the circuit court's decision for an erroneous exercise of discretion. *See* ***Board of Regents-UW System v. Decker***, 2014 WI 68, ¶19, 355 Wis. 2d 800, 850 N.W.2d 112. Before granting an injunction under § 813.125, the circuit court must find "reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner." Sec. 813.125(4)(a)3. We will affirm the circuit court's factual findings unless they are clearly erroneous. ***Decker***, 355 Wis. 2d 800, ¶20. "However, whether reasonable grounds exist to grant the injunction is a question of law that we review *de novo*." ***Id.*** (italics added).

Here, Petitioner contends that the unwanted telephone calls from Chehin were sufficient to establish reasonable grounds to believe that he had engaged in harassment. She asserts that the numerous telephone calls clearly established a repeated course of conduct and that the calls did not serve a legitimate purpose. According to Petitioner, the calls caused her worry, impeded her, and "served to vex" her.

Based on the evidence that was presented, the circuit court found that, although Petitioner received a number of calls from Chehin over the course of several months, none of the calls were answered, and there was no voicemail left; and, therefore, there is no evidence that the calls were for an illegitimate purpose. *See* WIS. STAT. § 813.125(1)(am)4.b. (definining 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"). Additionally, the circuit court found that since Petitioner did not testify, there was no evidence in the record that she was intimidated or harassed by the calls.

The circuit court's findings are adequate and supported by the evidence in the record. We likewise conclude that Petitioner failed to satisfy the "reasonable grounds" burden of proof. We are not convinced by her assessment that the phone calls—regardless of whether there were any discussions during them—qualified as a course of conduct that constituted harassment.

Alternatively, Petitioner argues that the circuit court erred when it prohibited her from introducing evidence related to a 2018 domestic abuse injunction case. She argues that the circuit court should have allowed her to introduce such evidence to show Chehin's "entire course of conduct[.]"

The circuit court ruled that it would take judicial notice of prior incidents, including the 2018 domestic abuse injunction case, would consider them as background information, but

would not allow Petitioner to present detailed testimony concerning them.[2] The circuit court explained that testimony related to phone calls was more relevant to this case and that it was not going to readjudicate matters that had already been decided or were pending.[3]

We review a circuit court's ruling on the admissibility of evidence for an erroneous exercise of discretion. ***State v. Ross***, 2003 WI App 27, ¶35, 260 Wis. 2d 291, 659 N.W.2d 122. We will sustain a discretionary decision as long as the court examined the relevant facts, applied a proper standard of law, and used a rational process to reach a reasonable conclusion. ***Id.***

Petitioner has failed to present a developed argument showing that the circuit court erroneously exercised its discretion by limiting the evidence to the phone calls. She does not cite any legal authority supporting her argument that the circuit court erred in its ruling to limit references to the 2018 domestic abuse injunction case and does not adequately explain how the 2018 incident was relevant to this matter. Consequently, we will not discuss this argument further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (holding that this court "may decline" to address arguments that are not developed and are "supported by only general statements").

[2] Petitioner incorrectly contends that the record does not support the proposition that the circuit court took judicial notice of prior incidents involving the parties. During the *de novo* hearing, the circuit court specifically said: "I do take judicial notice of previous actions brought by [Petitioner], not only here, including the case … previously referred to in the record [i.e., the domestic abuse injunction case]." Later, the circuit court stated: "The court notes that there was a previous case beyond that, and there were cases in Gulfport, Mississippi, which was adjudicated, as well as in San Diego, California. The court notes that one of those, including the [domestic abuse injunction case], may still be pending."

[3] Chehin's counsel advised the court that the 2018 case had not been finally resolved, and, as noted, the circuit court acknowledged that the domestic abuse injunction case may have still been pending at the time it made its ruling in this case.

Lastly, Petitioner argues that the circuit court should have granted her request for an adjournment. At the start of the *de novo* hearing, Petitioner moved for an adjournment to retain counsel and because she wanted to subpoena a Mississippi police officer, and "the Navy" to testify concerning earlier incidents between the parties. The circuit court noted that Petitioner had weeks leading up to the hearing to retain a new attorney and indicated that the witnesses and information Petitioner sought to subpoena appeared to be an "attempt[] to elicit testimony from matters that occurred some time ago." The circuit court then explained to Petitioner that what it deemed most relevant were the recent telephone calls. The circuit court did not expressly rule on the motion; however, when it invited her to proceed, Petitioner did so without further objection.

Whether to adjourn the hearing was discretionary with the circuit court. *See* ***Rechsteiner v. Hazelden***, 2008 WI 97, ¶28, 313 Wis. 2d 542, 753 N.W.2d 496; ***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). Petitioner's argument on this issue amounts to generalized statements, without pertinent supporting legal authority, that she was deprived of her safety interests, her opportunity to retain counsel, and her due process right to a meaningful hearing. Once again, this is insufficient to warrant further consideration. *See* ***Pettit***, 171 Wis. 2d at 646. We cannot conclude that the circuit court erred by not adjourning the hearing.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* 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