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DISTRICT II

January 18, 2023

To:

Hon. Todd K. Martens
Circuit Court Judge
Electronic Notice

Laura L. Dunn
Electronic Notice

Sarah Adjemian
Juvenile Clerk
Washington County Courthouse
Electronic Notice

Jordan C. Loeb
Electronic Notice

Mark Maciolek
Electronic Notice

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

2021AP2226-FT Petitioner v. Nicholas D. Krcma (L.C. #2021CV302)

Before Gundrum, P.J., Neubauer 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).

Petitioner appeals an order dismissing her harassment injunction petition against Nicholas Krcma. Petitioner argues the circuit court erred by determining Petitioner failed to meet her burden of proving entitlement to a harassment injunction under WIS. STAT. § 813.125 (2019-20).¹ 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. We affirm.

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

Petitioner works as an administrator for a virtual school. When Krcma and his wife sought to enroll their child at the school, Petitioner petitioned for a harassment injunction against Krcma, alleging she was entitled to an injunction because Krcma had previously sexually assaulted her.

A party is entitled to a harassment injunction if, after a hearing, the court “finds reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner.” WIS. STAT. § 813.125(4)(a)3. “Harassment,” as relevant to this appeal, means “engaging in an act that would constitute ... sexual assault under [WIS. STAT. §] 940.225.” Sec. 813.125(1)(am)4.a.

At the injunction hearing, Petitioner introduced no evidence about Krcma’s conduct toward her that would allow a court to determine whether his acts constituted sexual assault under WIS. STAT. § 940.225. Petitioner also did not introduce a judgment of conviction (as one did not exist) proving Krcma had been convicted of sexual assault under § 940.225.

Instead, Petitioner relied on a transcript from a criminal plea hearing indicating Krcma, as part of a plea agreement, pled no contest to one count of third-degree sexual assault for an incident involving Petitioner. The agreement indicated entry of judgment on the sexual assault charge would be deferred for a period of three years, and upon successful completion of the terms of the agreement, the State would move to dismiss the charge. The circuit court used the

complaint as a factual basis for the charge² and, pursuant to the agreement, specifically indicated it would withhold a finding of guilt for a period of three years.

The circuit court for the present case determined the no-contest plea and plea hearing transcript along with the enrollment of Krcma’s child in the virtual school where Petitioner worked were insufficient to establish Krcma “engaged in harassment with intent to harass or intimidate the petitioner,” WIS. STAT. § 813.125, and dismissed the petition. On appeal, Petitioner argues this evidence—especially the no-contest plea and hearing transcript—established reasonable grounds to issue a harassment injunction.

We disagree. WISCONSIN STAT. § 904.10 provides, in relevant part, “a plea of no contest” and “statements made in court ... in connection with” such a plea are “not admissible.” The statute is clear and unambiguous. *State v. Mason*, 132 Wis. 2d 427, 432, 393 N.W.2d 102 (Ct. App. 1986). A no-contest plea in a criminal case “cannot be used collaterally as an admission in future civil litigation[.]” *Robinson v. City of West Allis*, 2000 WI 126, ¶46, 239 Wis. 2d 595, 619 N.W.2d 692. Accordingly, pursuant to § 904.10, Petitioner could not rely on Krcma’s no-contest plea and statements made at the plea hearing to satisfy her burden of proof for a harassment injunction.

Without the no-contest plea and plea hearing transcript, there are insufficient facts in the record to permit a court to determine that Krcma harassed Petitioner. The circuit court did not err by ordering dismissal of the harassment-injunction petition.

² The underlying complaint is not part of this record.

IT IS ORDERED that the order of the circuit court is 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