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DISTRICT II

May 3, 2023

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

2021AP1064

T.A. v. B.E. (L.C. #2021CV112)

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).

B.E. appeals from a circuit court order issuing a child abuse injunction against him. He challenges the sufficiency of the evidence. 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 (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

B.E. and T.A. are the parents of M.A., a boy born in December 2015. Since his birth, M.A. has lived with his mother, T.A. M.A. had minimal contact with his father, B.E., in the first couple years of his life. That changed in the summer of 2018 when M.A. began to visit B.E. more frequently. Regular visits continued throughout the rest of 2018 and 2019.

In December 2019—the same month that M.A. had his first and only overnight visit with B.E.—T.A. noticed a change in M.A.’s behavior. She described him as having “outrageous anger fits” that included screaming, hitting, kicking, throwing things, and even refusing to do activities that he loved. This behavior briefly subsided when M.A. stopped seeing B.E. due to COVID-19² restrictions. However, it returned when M.A. began seeing B.E. again.

In August 2020, while changing clothes, M.A. told T.A. that his ““butt hurts[.]”” When T.A. asked him why, M.A. disclosed that, ““These guys would take his fingers, go inside so you can take them home and smell them later[.]”” T.A. told M.A. that ““[n]obody should hurt your butt,”” to which M.A. responded, ““But dad loves my butt.”” M.A. later remarked, ““Dad needs to be reminded of the privacy rules to not put his fingers in my butt where the poop comes out with or without my clothes on.””

T.A. subsequently moved to a different county and placed M.A. in counseling. M.A. would not see B.E. again until a family court awarded B.E. with visitation, which resumed in February 2021. Before then, T.A. described M.A. as a typically loving, easygoing, determined, and independent child. However, when the visits with B.E. resumed, M.A. became distraught.

² The World Health Organization declared a global pandemic of Coronavirus Disease 2019 (COVID-19) on March 11, 2020, due to widespread human infection worldwide.

According to T.A., his behavior included screaming, hitting, kicking, destroying things, and refusing “everything” as well as a noticeable loss of his independence and engaging in disturbing actions such as punching his crotch area.

In March 2021, M.A. petitioned for a child abuse injunction against B.E. After a hearing on the matter, the circuit court granted an injunction. In doing so, it found that there was sufficient evidence to show that B.E. had caused M.A. emotional damage. This appeal follows.

A circuit court may issue a child abuse injunction if it “finds reasonable grounds to believe that the respondent has engaged in, or ... may engage in, abuse of the child victim.” WIS. STAT. § 813.122(5)(a)3. The definition of “[a]buse” includes, among other things, “[e]motional damage for which the child’s parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.” *See* WIS. STAT. §§ 48.02(1)(gm) and 813.122(1)(a).³

We apply a mixed standard of review to the circuit court’s decision to issue an injunction. *See Kristi L.M. v. Dennis E.M.*, 2007 WI 85, ¶22, 302 Wis. 2d 185, 734 N.W.2d 375. We will uphold the court’s findings of fact unless they are clearly erroneous. *Id.* However, we review de novo the court’s conclusion of law as to whether reasonable grounds existed to grant the injunction. *Id.* We may independently review the Record to determine whether sufficient evidentiary grounds existed to sustain the court’s decision. *Id.*

³ “Emotional damage,” in turn, is defined as “harm to a child’s psychological or intellectual functioning.” WIS. STAT. § 48.02(5j). It is “evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and stage of development.” *Id.*

On appeal, B.E. challenges the sufficiency of the evidence for the injunction. He disputes that reasonable grounds existed to believe that he caused severe emotional damage to M.A. Additionally, he complains that T.A. failed to show that he neglected, refused, or was unable to seek treatment or take steps to help M.A. We are not persuaded by B.E.'s arguments.

Here, the circuit court heard evidence of M.A.'s substantial and observable change in behavior beginning the month of his first and only overnight visit with B.E. and continuing any time he visited B.E. thereafter. That change, as recounted by T.A.'s testimony, manifested most noticeably in outward aggressive behavior. The court also heard evidence of M.A.'s statements that B.E. "loves my butt" and "needs to be reminded of the privacy rules to not put his fingers in my butt where the poop comes out with or without my clothes on." From all of this, the court could have reasonably inferred that B.E. engaged in conduct that caused M.A. severe emotional damage. By failing to acknowledge his role in causing M.A. harm,⁴ the court could have also concluded that B.E. neglected, refused, or was unable to seek treatment or take steps to help M.A. In the end, on this Record, we are satisfied that there was sufficient evidence to support the injunction.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

⁴ At the injunction hearing, B.E. denied abusing M.A.

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

Sheila T. Reiff
Clerk of Court of Appeals