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DISTRICT II

May 10, 2023

To:

Hon. David P. Wilk
Circuit Court Judge
Electronic Notice

Donald J. Bielski
Electronic Notice

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

Christopher William Rose
Electronic Notice

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

2022AP1295

Petitioner v. Matthew Robert Braun (L.C. #2022CV485)

Before Gundrum, P.J., Neubauer and Lazar, 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 denying her request for a restraining order against her former husband, Matthew Robert Braun. 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 The proof offered at the hearing did not show the “course of conduct or repeated[] ... acts which harass or intimidate” necessary to obtain a restraining order because of the timing of the alleged incidents; all but one of the incidents on which the petition was based occurred at least three years ago. *See* WIS. STAT. § 813.125(1)(am)4.b. We therefore affirm.

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

Petitioner obtained a four-year restraining order against Braun, her ex-husband, in April, 2018. Upon its expiration, she petitioned the court for a new harassment injunction. The circuit court conducted a de novo hearing² on the issue of whether Petitioner had met her burden of proof to obtain an injunction. Petitioner testified at this hearing that Braun had violated the previous injunction multiple times by, among other things, bringing their child's backpack to her house; appearing at events at their child's school; approaching her at a coffee shop she routinely visited; going to a gym when he knew she was there; sending her text messages from his mother's phone; and sending her photos of their child on a riding lawnmower (about which Petitioner had safety concerns) and with her estranged father (whom she knew to be abusing drugs). All of these incidents were alleged to have taken place in 2018, 2019, or early 2020. In addition, Braun was convicted for violating the restraining order in 2019 by driving around Petitioner's workplace and making obscene gestures toward her. Finally, Petitioner testified that Braun had driven by her house multiple times. She asserted that he had no legitimate purpose for being in her neighborhood. The most recent "drive-by" was in March, 2022.

In issuing its oral ruling denying Petitioner's request for the injunction, the circuit court correctly noted the applicable definition of harassment: "[e]ngag[ing] in a course of conduct or repeatedly committing acts which harass or intimidate the person and which serve no legitimate purpose." *See* WIS. STAT. § 947.013(1m)(b). It found that Petitioner was credible, stating that "everything she's saying happened probably happened." The court determined, however, that Petitioner had not demonstrated a "current course of conduct" because the incidents "happened

² After the court commissioner granted a temporary restraining order against Braun, it denied Petitioner's request for injunction based on the lack of "recent conduct" and inadequate "notice of harassing conduct," prompting Petitioner's motion for a de novo hearing before the circuit court.

so long ago [that they could not] be considered continuing conduct.” Thus, it held she had not made an offer of proof sufficient to grant the injunction. Finally, the court acknowledged that Braun’s behavior was “play[ing] with fire” and warned that if the same conduct had occurred “last month and the month before that and the month before that, [it] might be having a different ruling.” The court admonished Braun to “choose a different path” instead of being in the same location or even the same side of town as Petitioner. Petitioner appeals, asserting that the court should have granted the injunction based on the “series of incidents that had occurred during the previous 4 years,” and not just the one recent incident (the “drive-by”) in March, 2022.

WISCONSIN STAT. § 813.125 sets forth the procedures for obtaining an injunction against a person who has allegedly violated the harassment statute, WIS. STAT. § 947.013. A circuit court “may grant” a harassment injunction if the court finds “reasonable grounds to believe that the respondent has engaged in harassment.” Sec. 813.125(4)(a)3.; *see also Welytok v. Ziolkowski*, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. “This presents a mixed question of fact and law.” *Welytok*, 312 Wis. 2d 435, ¶23. We will not set aside the circuit court’s factual findings unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). We independently review the court’s conclusion as to whether, based on the established facts, such reasonable grounds exist and whether Petitioner has met her burden of proof. *See Kristi L.M. v. Dennis E.M.*, 2007 WI 85, ¶22, 302 Wis. 2d 185, 734 N.W.2d 375 (explaining that appellate courts review de novo whether a set of facts meets the legal standard necessary to issue an injunction); *Welytok*, 312 Wis. 2d 435, ¶23. “[W]hether or not to finally grant an injunction is within the sound discretion of the circuit court, and our review ultimately is limited to whether that discretion was properly exercised.” *Welytok*, 312 Wis. 2d 435, ¶23.

Here, the circuit court found that there was no “current” or “existing course of conduct” because all of the incidents—save, arguably, Braun’s March 2022 drive-by—took place years before she filed her petition. We discern no error, let alone clear error, with respect to the court’s determination of when the alleged incidents of harassment occurred. As for the one recent incident of behavior allegedly meant to intimidate Petitioner, “it is clear that single isolated acts do not constitute ‘harassment’ under the statute.” See *Bachowski v. Salamone*, 139 Wis. 2d 397, 408, 407 N.W.2d 533 (1987). Even while noting, as the circuit court did, that an additional recent incident of similar character could justify an injunction, we agree with the court’s conclusion that Petitioner has failed to meet her burden of proof to show a “course of conduct” or “repeated[] commi[ssion of] acts which harass or intimidate.” WIS. STAT. § 813.125(1)(am)4.b. Therefore, we affirm.

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