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**DISTRICT I**

July 25, 2023

To:

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

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2020AP935

Lisa Douglas v. Pamela Bublitz (L.C. # 2020CV1179)

Before Brash, C.J., Donald, P.J., and White, J.

**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).**

Pamela Bublitz appeals from an order of the circuit court that imposed a three-year individual-at-risk injunction, barring her from contacting her mother. 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).<sup>1</sup> The order is summarily reversed, and the matter is remanded with instructions to dismiss the underlying petition.

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

Douglas and Bublitz are sisters. In January 2018, their mother Nancy began seeing Dr. Alexis Chesrow for chronic urinary tract infections. At that time, Nancy was eighty-five years old, and Bublitz was the primary agent under Nancy's power of attorney for health care instrument. Around this time, Nancy began experiencing memory issues that were eventually diagnosed as "Alzheimer's and dementia." In December 2018, Nancy was hospitalized, and Bublitz began researching assisted living options. On December 21, 2018, Nancy executed a new power of attorney for health care instrument, naming Douglas as her primary agent. That instrument was activated, on a finding of Nancy's incompetency, on January 2, 2019. Also in early January 2019, Nancy was moved into Francis House, an assisted living facility. Upon her admission to Francis House, Nancy came under the care of Dr. Alok Goyal.

Thus began a protracted battle between the sisters regarding Nancy's care. Bublitz accused Douglas of not properly caring for Nancy; Douglas accused Bublitz of interfering with Nancy's care and causing Nancy emotional distress during visits. For instance, after Nancy had a fall in August 2019, Bublitz contacted Dr. Chesrow about scheduling an appointment for Nancy because she (Bublitz) was concerned that Nancy was not following certain protocols Dr. Chesrow previously prescribed for her. Douglas declined when Chesrow's office contacted her to schedule an appointment. After Nancy fell again in October 2019 and was briefly in a convalescent facility, Dr. Goyal visited her before she returned to Francis House. At some point during the visit, Nancy called Bublitz and asked the doctor to speak with her. Bublitz, who has no medical training, suggested a medication change for Nancy, which Dr. Goyal approved contingent on Douglas's approval. Douglas did not approve, noting Nancy had been doing well under Goyal's care up to that point. Meanwhile, Douglas claimed that after visits from Bublitz, Nancy would become "almost depressed," refusing to go to activities, refusing to eat, and being

noncompliant with her caregivers. Douglas also expressed concerns that Bublitz's behaviors would cause Francis House to ask Nancy to leave.

On February 12, 2020, Douglas filed the underlying individual-at-risk injunction petition on Nancy's behalf under WIS. STAT. § 813.123.<sup>2</sup> Douglas alleged that Bublitz had "interfered with, or based upon prior conduct ... may interfere with," an investigation of the individual at risk, the delivery of protective services or protective placement to the individual at risk, or the delivery of services to the elder adult at risk. Douglas also alleged that Bublitz had engaged in physical abuse, emotional abuse, financial exploitation, neglect, and harassment of Nancy.

The circuit court held a hearing at which both Douglas and Bublitz testified. After Douglas testified, Bublitz moved for dismissal. Her attorney argued that "there is no indication here ... that [Bublitz] actually interfered with the delivery of any kind of services nor do I think that there is any evidence that she was involved in any kind of physical or emotional abuse of her mother." Douglas countered that there had been testimony "on a smattering of issues that all fit within the statutory definition of physical abuse, neglect, intimidation, [and] harassment." The circuit court concluded that "in the light most favorable to the petitioner [Douglas] there is enough here for me to go forward" and it denied the motion to dismiss.

At the close of the evidentiary hearing, the circuit court concluded, in relevant part:

I'm satisfied by clear and convincing evidence that Ms. Bublitz cannot follow orders and she cannot modify her behavior so that she can get to have visits with her mother and not interfere with the care of her mother and this is not easy for me to

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<sup>2</sup> Two prior injunction petitions filed by Douglas in 2019 were dismissed for reasons not relevant to this decision.

say because I think children should have access to their parents ... but not when that behavior or that contact causes them disruption in how they feel and how they think and I agree with the parties when they say to me that if Ms. Bublitz can't control her behavior at the facility where Nancy is placed, that the placement is going to say Nancy has to go. I see it happen all the time in my court where family members interfere in a way that the placement says sorry, we can't deal with that....

Now, I just don't trust Ms. Bublitz and I'm sorry to say this, I don't trust that she can follow the rules.... I find that Ms. Douglas' testimony was more credible than her sister[']s that the visits didn't really go that well....

....

So I do find that [Nancy] is an individual at risk under 813.123<sup>3</sup>.... *I find that there are reasonable grounds to believe that you, Ms. Bublitz, have interfered with, engaged in or based on prior conduct may engage in abuse as defined in 81[3].123 of the Wisconsin Statutes as stated in the court record....*

(Emphasis added.)

Based on those conclusions, the circuit court entered a written order requiring Bublitz “to avoid interference with an investigation of the individual at risk, the delivery of protective services to the individual at risk, or a protective placement of the individual at risk, or the delivery of services to the elder adult at risk”; “cease engaging in or threatening to engage in the physical abuse, emotional abuse, sexual abuse, treatment without consent, unreasonable confinement or restraint, financial exploitation, neglect, harassment, stalking of the individual at risk...”; “avoid the residence of the individual at risk and/or any other location temporarily

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<sup>3</sup> An individual at risk is “an elder adult at risk or an adult at risk.” See WIS. STAT. § 813.123(1)(ep). An elder adult at risk is a “person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.” See WIS. STAT. §§ 46.09(1)(br); 813.123(1)(cg). An adult at risk is “any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.” See WIS. STAT. §§ 55.01(1e); 813.123(1)(ae).

occupied by the individual at risk”; and “avoid contacting the individual at risk or causing any person other than a party’s attorney or a law enforcement officer to contact the individual at risk.” Bublitz appealed.

### **Mootness**

As an initial matter, we note that appellate briefing was completed in October 2020. We were notified in March 2021, before the matter was submitted to the court for decision in April 2021, that Nancy had passed away. Both parties asked that this court nevertheless issue a decision despite potential mootness.

“An issue is moot when its resolution will have no practical effect on the underlying controversy.” *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425. We generally decline to reach moot issues, though we may address moot issues in “exceptional or compelling circumstances.” *See Portage Cnty. v. J.W.K.*, 2019 WI 54, ¶12, 386 Wis. 2d 672, 927 N.W.2d 509. Given the significant lack of evidence to support the circuit court’s decision in this case, we conclude that this case presents a compelling circumstance.

### **Standard of Review**

The circuit court may grant an injunction under WIS. STAT. § 813.123(5)(a)3. if it finds “reasonable cause to believe” any of the following:

- a. That the respondent has interfered with or, based upon prior conduct of the respondent, may interfere with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043 ....
- b. That the respondent has interfered with the delivery of protective services to or a protective placement of the individual at

risk under ch. 55 ... or that the respondent has interfered with the delivery of services to an elder adult at risk under s. 46.90 (5m).

c. That the respondent has engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk ....

Whether reasonable cause exists is a mixed question of fact and law. *See Welytok v. Ziolkowski*, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. We will not set aside the circuit court’s findings of fact unless they are clearly erroneous, *see* WIS. STAT. § 805.17(2), but we independently review whether the established facts satisfy the statute, *see State v. Franklin*, 2004 WI 38, ¶5, 270 Wis. 2d 271, 677 N.W.2d 276.

The ultimate decision to grant an injunction and the scope thereof are matters of circuit court discretion. *See Welytok*, 312 Wis. 2d 435, ¶23. “A discretionary determination will be sustained where it is demonstrably made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law.” *Sunnyside Feed Co., Inc., v. City of Portage*, 222 Wis. 2d 461, 468, 588 N.W.2d 278 (Ct. App. 1998). “However, where a [circuit] court bases its decision on a mistaken view of the law, its decision constitutes an improper exercise of discretion as a matter of law.” *Forest Cnty. v. Goode*, 215 Wis. 2d 218, 225, 572 N.W.2d 131 (Ct. App. 1997).

### **A. Interference**

The circuit court first found that Bublitz “interfered,” without specifying precisely what Bublitz interfered with; presumably, the circuit court meant Bublitz had interfered with Nancy’s care, as directed by Douglas. Under WIS. STAT. § 813.123(5)(a)3.a., however, the “interference” must be with “an investigation of the elder adult at risk under [WIS. STAT. §] 46.90.” There is no evidence in this record of any investigation under § 46.90 with which Bublitz could interfere.

Alternatively, under § 813.123(5)(a)3.b., there may be “interference” with “the delivery of protective services to or a protective placement of the individual at risk under [WIS. STAT.] ch. 55 ... [or] with the delivery of services to an elder adult at risk under [WIS. STAT. §] 46.90(5m).” However, there is no evidence in this record that Nancy was receiving protective services under either WIS. STAT. ch. 55 or WIS. STAT. § 46.90(5m). Assuming without deciding that Nancy’s residency at Francis House was a “protective placement”—the definition of “protective placement” under WIS. STAT. § 55.01(6) is simply “a placement that is made to provide for the care and custody of an individual”—the protective placement for purposes of § 813.123 must be made *under ch. 55*. There is no evidence in this record of any agency involvement or protective placement under ch. 55.

Accordingly, while we have little doubt that Bublitz interfered or attempted to interfere with the care Douglas was arranging for Nancy’s care, that “interference” is insufficient to constitute the type of interference that would warrant an injunction under WIS. STAT. § 813.123. The circuit court applied too broad a definition of interference, making an error of law.

### **B. Abuse**

The circuit court found that Bublitz “engaged in or based on prior conduct may engage in abuse as defined in 81[3].123 of the Wisconsin Statutes as stated in the court record.” For purposes of WIS. STAT. § 813.123, “abuse” means physical abuse, emotional abuse, sexual abuse, treatment without consent, or unreasonable confinement or restraint. *See* WIS. STAT. §§ 813.123(1)(a); 46.90(1)(a). Douglas’s petition did not allege sexual abuse, treatment without consent, or unreasonable confinement or restraint, so we will not discuss those further.

“Physical abuse’ means the intentional or reckless infliction of bodily harm.” WIS. STAT. § 46.90(1)(fg). In her respondent’s brief, Douglas argues that physical abuse “is not just hitting someone” but includes things like “interfering with medication decision of the assigned caregiver” or “seeking to have her own medical doctors take over.” Douglas does not, however, explain how these actions did or would result in the intentional or reckless infliction of bodily harm. Thus, there is no evidence in this record that Bublitz physically abused Nancy.

“Emotional abuse’ means language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed.” WIS. STAT. § 46.90(1)(cm). Douglas’s examples of Bublitz’s emotional abuse include telling Nancy she was not being properly cared for, remarking on Nancy’s clothing, or discussing the ongoing court proceedings. We note, however, that the circuit court did not make any factual finding that Bublitz’s behavior served no legitimate purpose. Thus, we are unpersuaded that this behavior legally constitutes “emotional abuse” as contemplated by the statute.

### **C. Remaining Allegations**

Douglas also alleged that Bublitz had committed neglect, financial exploitation, and harassment against Nancy. *See* WIS. STAT. § 813.123(5)(a)3.c. There are no factual findings to support these allegations, nor are there any arguments in Douglas’s brief regarding these alleged behaviors.

“Neglect” is the failure of a caregiver to endeavor to secure or maintain adequate care, services, or supervision for an individual. *See* WIS. STAT. § 46.90(1)(f). Douglas’s petition is



premised, at least in part, on her assertion that Bublitz was not Nancy's caregiver after January 2019.

“Financial exploitation” has an extensive definition in WIS. STAT. § 46.90(1)(ed), involving seven subdivisions which we need not reproduce here. The only arguably applicable subdivision, § 46.90(1)(ed)1., defines “financial exploitation” as “[o]btaining an individual's money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent.” Although there were allegations in Douglas's attachments to the injunction petition that allude to behavior that potentially satisfies this definition, no supporting evidence was presented at the injunction hearing to sustain a finding of financial exploitation.

Finally, harassment has two definitions, only one of which applies here: “[e]ngaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.” *See* WIS. STAT. § 813.125(1)(am)4.a. As noted, however, there was no factual finding that Bublitz's behaviors failed to serve any legitimate purpose, so “harassment” has not been shown.

Ultimately, the injunction in this case cannot be sustained because no matter how much disdain the circuit court may have had for Bublitz's actions, interference, abuse, neglect, financial exploitation, and harassment all have specific statutory definitions that the circuit court did not appear to acknowledge or apply and which were simply not satisfied by the evidence presented in this case.

Moreover, even if we were to conclude that there was some evidence to support, for instance, a finding of financial exploitation or harassment, injunctive relief “may not be broader than equitably necessary.” See *State v. Seigel*, 163 Wis. 2d 871, 890, 472 N.W.2d 584 (Ct. App. 1991); see also *City of Milwaukee v. Burnette*, 2001 WI App 258, ¶10, 248 Wis. 2d 820, 637 N.W.2d 447. Because there was neither interference nor abuse as defined in WIS. STAT. § 813.123, the injunction entered in this case was overbroad. Under other circumstances, we might reverse and remand for the circuit court to clarify the scope of the injunction. See *Board of Regents v. Decker*, 2014 WI 68, ¶52, 355 Wis. 2d 800, 850 N.W.2d 112. Nancy’s death, however, makes further refinement of the injunction moot. See *Olson*, 233 Wis. 2d 685, ¶3. Accordingly, we reverse the order and remand with instructions to dismiss the case.

IT IS ORDERED that the order is summarily reversed, see WIS. STAT. RULE 809.21, and remanded with directions to dismiss the petition as moot.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*