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DISTRICT IV

August 10, 2023

To:

Hon. Nicholas McNamara
Circuit Court Judge
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Scott A. Small
Electronic Notice

Nicole Williams Buttery
Electronic Notice

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

2022AP843 Petitioner v. Dominise C. McCullough (L.C. # 2021CV2990)

Before Blanchard, Graham, and Nashold, 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).

Dominise C. McCullough appeals a circuit court order granting the petitioner a four-year harassment injunction against McCullough.[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.

[1] McCullough also filed for an injunction against the petitioner. The circuit court denied McCullough's petition, but McCullough now appeals only the order granting the injunction against her. Therefore in this opinion we exclusively address McCullough's challenge to the harassment injunction granted to the petitioner.

RULE 809.21 (2021-22).[2] We affirm the injunction as a proper exercise of circuit court discretion.

In order to grant a harassment injunction under WIS. STAT. § 813.125, a circuit court must find "'reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner.'" ***Board of Regents-UW Sys. v. Decker***, 2014 WI 68, ¶20, 355 Wis. 2d 800, 850 N.W.2d 112 (quoting § 813.125(4)(a)3.).

We review a circuit court's decision to grant such an injunction for an erroneous exercise of discretion. ***Id.***, ¶19. We will affirm the circuit court's factual findings unless they are clearly erroneous. ***Id.***, ¶20. Whether reasonable grounds exist to grant the injunction presents a question of law that we review de novo. ***Id.***

The following allegations were testified to at an evidentiary hearing.[3] The petitioner sought to end a romantic relationship with McCullough in the fall of 2021. McCullough resisted the petitioner's attempts to end the relationship. Later, she alleged that she was pregnant with the petitioner's child. The petitioner originally was supportive of McCullough, including paying for a doula to provide assistance in connection with the pregnancy and delivery, but McCullough's unwanted contacts and demands on the petitioner continued to increase. Examples of McCullough's conduct in the time leading up to the injunction order include McCullough: arriving without prearrangement at the petitioner's house and refusing to leave until the petitioner decided he needed to call the police; convincing the petitioner to take her to a hospital due to purported issues with the pregnancy and then repeatedly refusing to accept Uber

[2] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

[3] We pause to note that McCullough's only brief filed on appeal presents a limited and highly slanted version of events and omits key facts that in part formed the basis for the circuit court's findings.

rides the petitioner ordered to help McCullough return home; causing a scene with security guards and police at the hospital, including jumping into the bed of the petitioner's pick-up truck and refusing to get out; sending "spoofing" texts and making phone calls pretending to be the petitioner's ex-wife, his sister, and representatives of his children's school and daycare facility; and sending repeated emails to the petitioner and using other messaging apps to demand money from him for food, rides, and other personal items. McCullough engaged in this conduct despite the fact that the petitioner communicated to her "[r]epeatedly over text messages" to stop contacting him. McCullough's continued unwanted contact eventually caused the petitioner to again contact a local police officer, who reached out to McCullough and told her to immediately cease contacting the petitioner through any means.

After the evidentiary hearing at which the petitioner, McCullough, and the police officer testified, the circuit court made the following findings of fact. McCullough "engaged in a course of conduct and has repeatedly committed acts which harass or intimidate [the petitioner] and serve no legitimate purpose[.]" That conduct included McCullough "contacting [the petitioner] when [he had] been clear and unambiguous that he wants no contact and doing so repeatedly." The court also found that "McCullough's credibility is doubtful, in general, particularly with regard to her conduct at [the] [h]ospital … and … the police officer's testimony about what [McCullough] was told and nevertheless continued to do, that is, contact [the petitioner]."

The circuit court granted the petitioner's injunction petition, ordering McCullough to cease harassing and contacting the petitioner and to refrain from doing so again for the following four years. McCullough appeals.

On appeal, McCullough asserts that the circuit court misinterpreted and misapplied WIS. STAT. § 813.125. McCullough argues that she lacked the intent to harass or intimidate the petitioner. She also contends that her allegedly harassing conduct served a legitimate purpose.

Harassment is defined as "[e]ngaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose." WIS. STAT. § 813.125(1)(am)4.b. "[C]onduct or repetitive acts that are intended to harass or intimidate do not serve a legitimate purpose." ***Bachowski v. Salamone***, 139 Wis. 2d 397, 408, 407 N.W.2d 533 (1987). Intent to harass "'must be inferred from the acts and statements of the person, in view of the surrounding circumstances.'" ***Welytok v. Ziolkowski***, 2008 WI App 67, ¶26, 312 Wis. 2d 435, 752 N.W.2d 359 (quoted source omitted).

On appeal, McCullough challenges the circuit court's finding that her conduct was intended to harass the petitioner. But this argument fails to apply the proper standard of review. As we now explain further, it completely disregards our standard of review for McCullough to argue that "[t]he evidence points towards a more reasonable conclusion" regarding her intent than the conclusion that was reached by the circuit court.

The weight and credibility of the evidence was for the circuit court to determine, given McCullough's failure to show a clear error in fact finding by the court. *See* ***State v. Peppertree Resort Villas, Inc.***, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. The court drew reasonable inferences about McCullough's intent based on the totality of the evidence presented at the hearing regarding McCullough's conduct toward the petitioner. *See* ***Welytok***, 312 Wis. 2d 435, ¶26. The court's findings, which are supported in the record and not shown by McCullough to be clearly erroneous, show a course of conduct or repeated acts by McCullough that could be

reasonably interpreted as showing an intent to harass or intimidate the petitioner and that served no legitimate purpose. *See* ***Bachowski***, 139 Wis. 2d at 408. Accordingly, we uphold the circuit court's finding that it was McCullough's intent to harass the petitioner.

McCullough separately argues that the circuit court erroneously found that her repeated contacts with the petitioner did not serve a legitimate purpose, particularly in light of her pregnancy and what she characterizes as her urgent need to communicate with the petitioner regarding the pregnancy. McCullough contends that her contacts with the petitioner seeking money for food and medical assistance served a legitimate purpose and are "protected and permitted by law." In this vein, she asserts that the legislature in enacting WIS. STAT. § 813.125 could not have intended "[t]o prevent an expecting mother from contacting the father of her child." However, McCullough does not direct us to any law suggesting that there is a pregnancy safe harbor or exception to the application of § 813.125, which is the implied but unsupported premise of her argument. *See* ***Post v. Schwall***, 157 Wis. 2d 652, 657, 460 N.W.2d 794 (Ct. App. 1990) (arguments unsupported by legal authority may be deemed undeveloped and need not be given weight). Put differently, McCullough provides no legal authority to support the proposition that the circuit court here was required to deny the injunction request because her alleged harassment of the petitioner occurred, at least in part, in the context of her pregnancy.

To summarize, McCullough fails to persuade us that the circuit court lacked reasonable grounds under the legal standards provided above to grant an injunction against McCullough

based on the court's findings that her conduct was intended to harass the petitioner and served no legitimate purpose.[4]

Upon the foregoing reasons,

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

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

Samuel A. Christensen
Clerk of Court of Appeals

[4] The petitioner has filed a timely motion with this court seeking costs, related fees, and reasonable attorney's fees pursuant to WIS. STAT. § 809.25(3), which authorizes this court to impose sanctions upon determining that an appeal is frivolous. "'To award costs and attorney fees, an appellate court must conclude that the entire appeal is frivolous.'" ***Larson v. Burmaster***, 2006 WI App 142, ¶45, 295 Wis. 2d 333, 720 N.W.2d 134 (quoted source omitted).

As we explain in the text, we consider McCullough's limited arguments on appeal to be unpersuasive and we conclude that the record supports the circuit court's findings. However, we cannot say that the appeal is entirely meritless given the nature of the record and the appeal considered as a whole. Accordingly, the petitioner's motion for sanctions is denied.