

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 20, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP453

Cir. Ct. No. 2013CV653

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

MELISSA ANN BEVAN,

PETITIONER-RESPONDENT,

V.

AARON HOWARD ALDER,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Jefferson County:
DAVID WAMBACH, Judge. *Affirmed.*

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Aaron Alder appeals a harassment injunction order granted in favor of his former spouse, Melissa Bevan, and an order denying a motion for reconsideration. Alder argues the circuit court erroneously exercised its discretion by not continuing the hearing on Bevan's petition for an injunction

and he asks this court to vacate the injunction. For the reasons discussed below, we affirm.¹

BACKGROUND

¶2 On November 18, 2013, Bevan filed a petition with the circuit court for a temporary restraining order against Alder and for an injunction hearing. The court issued a temporary restraining order on that date, effective until November 25, 2013, and scheduled an injunction hearing for November 25. Alder was served the temporary restraining order and notice of the injunction hearing on November 18.

¶3 The injunction hearing was held on November 25, 2013. Alder, who appeared without counsel, asked the court to adjourn the hearing because he had been unable to retain counsel to represent him at the hearing. Alder stated that he had contacted multiple attorneys, but none were able to appear at the hearing due to scheduling conflicts, conflicts of interest, or because the matter was outside the attorney's area of practice. The circuit court denied Alder's request, stating that "[t]he statutes indicate that the matter can be adjourned" for "only one reason ... a lack of service." The hearing proceeded, and testimony was given by both Bevan and Alder.

¶4 At the conclusion of the hearing, the court found that Bevan's testimony was credible and determined that reasonable grounds existed to believe that Alder had engaged in harassing conduct with the intent to intimidate or harass

¹ Bevan did not submit a respondent's brief. Accordingly, this appeal is decided solely on the record and the appellant's brief.

Bevan. The court granted Bevan's petition and issued a harassment injunction effective until November 25, 2017. Alder filed a motion for reconsideration, arguing that the hearing should have been rescheduled to afford him the opportunity to have legal representation present. The circuit court denied Alder's motion. Alder appeals.

DISCUSSION

¶5 Alder contends on appeal that the injunction order should be vacated and the matter remanded to the circuit court for a new injunction hearing because the circuit court erroneously denied his request to adjourn the injunction hearing, which he argues deprived him of a fair hearing because he was forced to proceed without counsel present.

¶6 A circuit court's decision to grant or deny an adjournment is reviewed for an erroneous exercise of discretion. *See State v. Leighton*, 2000 WI App 156, ¶27, 237 Wis. 2d 709, 616 N.W.2d 126. A court properly exercises its discretion if the court "examines the relevant facts, applies a proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach." *Gerald O. v. Cindy R.*, 203 Wis. 2d 148, 152, 551 N.W.2d 855 (Ct. App. 1996).

¶7 Alder contends that the court failed to properly exercise its discretion because the court erroneously believed that it did not have statutory authority to grant his request for an adjournment. In denying Alder's request for an adjournment of the hearing, the circuit court stated that, according to statute, the hearing could be adjourned only for lack of service. Alder asserts, however,

that the court had authority to adjourn the hearing under WIS. STAT. § 813.125(3)(c) (2011-12).² Section 813.125(3)(c) provides that a court “shall hold” an injunction hearing “within 14 days after the temporary restraining order is issued.” Alder argues that because the temporary restraining order was entered on November 18, 2013, the circuit court had authority to adjourn the injunction hearing under § 813.125(3)(c) until December 2, at which point his attorney “would have been available” to represent him.³

¶8 We agree with Alder that the circuit court was incorrect in stating that it did not have statutory authority to grant his request for an adjournment of the hearing, and that the court did not proceed under an appropriate legal standard. However, we will not automatically reverse when a circuit court fails to apply an appropriate legal standard if, after our independent review of the entire record, we can conclude that there are facts which would support the court’s decision had it applied an appropriate legal standard. See *State v. Hines*, 173 Wis. 2d 850, 860-61, 496 N.W.2d 720 (Ct. App. 1993).

¶9 At the injunction hearing, Alder requested an adjournment of the hearing because although he had contacted multiple attorneys, none were willing or available to represent him at the hearing. Alder informed the court that three of the attorneys he contacted were either on vacation the week the hearing was held

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

³ Alder’s argument in his brief that he would have had an attorney at a later hearing is not supported by the record, as we discuss further in the body of the opinion. A party cannot use a brief to testify. This court proceeds only upon the record developed in the circuit court. See *Jenkins v. Sabourin*, 104 Wis. 2d 309, 313-14, 311 N.W.2d 600 (1981) (we will not consider evidence outside the appellate record).

or had a prior appointment at the time of the hearing. He informed the court that three other attorneys were unable to represent him due to conflicts of interest and that another attorney's area of practice did not include restraining orders. At no point did Alder inform the court that he had retained counsel to represent him in the matter and that counsel would be available for a hearing held anytime between that date, which was the Monday before Thanksgiving, and December 2, 2013, the Monday following Thanksgiving. We conclude, under these facts, that it would be reasonable for a court to determine that Alder had presented an insufficient basis to support a conclusion that he would have an attorney available to represent him at an injunction hearing if one were scheduled anytime between that date and December 2, particularly in light of the holiday week. Alder did not present the court with any other reason for adjournment of the hearing. Accordingly, we conclude that the facts support the court's decision to deny Alder's motion under a correct legal standard. We therefore affirm.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

