

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 27, 2010

A. John Voelker
Acting 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. 2009AP1797

Cir. Ct. No. 2008CV15692

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

FEDERAL INSURANCE AGENCY,

PETITIONER-RESPONDENT,

v.

JANICE JOHNSON KUHN,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
THOMAS R. COOPER, Judge. *Reversed and cause remanded with directions.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Janice Johnson Kuhn appeals *pro se* from a circuit court order affirming a harassment injunction against her imposed by a circuit court commissioner. We conclude that Kuhn did not receive the *de novo* hearing that the circuit court should have afforded her under WIS. STAT. § 757.69(8)

(2007-08).¹ Therefore, we reverse and remand with directions that the circuit court conduct a *de novo* hearing and make findings of fact to support its resolution of the dispute.

BACKGROUND

¶2 The relevant facts are few. Federal Insurance Agency (Federal) petitioned for an injunction against Kuhn pursuant to WIS. STAT. § 813.125, alleging that she was harassing the company. After a hearing at which Kuhn testified, a court commissioner granted the injunction, enjoining Kuhn from harassing Federal for a period of two years. Kuhn moved for a hearing *de novo* before the circuit court pursuant to WIS. STAT. § 757.69(8).

¶3 On the day of the *de novo* hearing, Kuhn appeared before the circuit court *pro se*. Federal appeared by an attorney who explained that Federal was “just looking for the [c]ourt to review the court commissioner’s decision.” The circuit court directed the parties to argue, and both Kuhn and counsel for Federal explained their respective positions. After the parties presented their arguments, the circuit court stated that it was “granting the injunction.” The court thereafter entered a written order stating that “Kuhn’s appeal of [the court commissioner’s] decision is denied” and that the “injunction is affirmed.” Kuhn appeals.²

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² After the deadline for filing briefs had passed, Kuhn submitted a proposed appendix to her reply brief. Kuhn did not first move to extend the briefing deadline nor did she offer any reason for this court to accept a belated submission. Consequently, the court has not considered the documents in Kuhn’s proposed appendix to her reply brief.

DISCUSSION

¶4 A party may move for review of a circuit court commissioner’s decision pursuant to WIS. STAT. § 757.69(8). The statute provides, in pertinent part, that “[a]ny determination, order, or ruling by a circuit court commissioner may be certified to the branch of court to which the case has been assigned, upon a motion of any party for a hearing *de novo*.” *Id.*

¶5 As we recently explained, “[t]he commonly accepted meaning of a *de novo* hearing is ‘[a] new hearing of a matter, conducted as if the original hearing had not taken place.’” *Stuligross v. Stuligross*, 2009 WI App 25, ¶12, 316 Wis. 2d 344, 763 N.W.2d 241 (citation omitted, second brackets *Stuligross*). Therefore, a party who obtains a *de novo* hearing under WIS. STAT. § 757.69(8), is entitled to “a fresh look at the issues.” *Stuligross*, 316 Wis. 2d 344, ¶14. The circuit court must take testimony unless the parties stipulate to the facts. *Id.*, ¶12. Relatedly, the circuit court may not rely on the court commissioner’s findings. The circuit court must consider the issues anew, determine the facts, and reach its own conclusions. A hearing pursuant to § 757.69(8) “is literally a new hearing, not merely a review of whatever record may have been made before the ... court commissioner.” *Stuligross*, 316 Wis. 2d 344, ¶12.

¶6 In this case, Kuhn sought a *de novo* hearing of Federal’s petition for a harassment injunction under WIS. STAT. § 813.125. Before the circuit court may grant an injunction under § 813.125, the circuit court must find “reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner.” Section 813.125(4)(a)3.; *see also Welytok v. Ziolkowski*, 2008 WI App 67, ¶¶23, 25, 312 Wis. 2d 435, 752 N.W.2d 359. Whether to grant an injunction upon making such findings, however, lies within

the circuit court's sound discretion. *Welytok*, 312 Wis. 2d 435, ¶23. The circuit court erroneously exercises its discretion in the context of an injunction proceeding when the circuit court fails to consider and make a record of the factors relevant to its determination, considers clearly irrelevant or improper factors, or clearly gives too much weight to one factor. See *School Dist. of Slinger v. Wisconsin Interscholastic Athletic Ass'n*, 210 Wis. 2d 365, 370, 563 N.W.2d 585 (Ct. App. 1997).

¶7 Here, the circuit court did not take any testimony during the *de novo* hearing, and the parties did not place a stipulation of facts on the record. Further, the circuit court did not make any findings of fact as to whether Kuhn did anything that constituted harassment of Federal, nor did the circuit court make any findings as to Kuhn's intent. Rather, the circuit court heard argument and then granted an injunction. We cannot conclude that the circuit court exercised its discretion in the manner required.

¶8 Kuhn sought a *de novo* hearing before the circuit court but she did not receive the hearing contemplated by WIS. STAT. § 757.69(8). Therefore, we reverse the order of the circuit court. We remand for a *de novo* hearing at which the circuit court will resolve the dispute after making factual findings that are based on testimony or on a stipulation of the parties.³

³ The circuit court may, of course, exercise its "discretion to limit the introduction of evidence pursuant to the Wisconsin Rules of Evidence." *Stuligross v. Stuligross*, 2009 WI App 25, ¶14 n.8, 316 Wis. 2d 344, 763 N.W.2d 241.

By the Court.—Order reversed and cause remanded with directions.

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

