COURT OF APPEALS
DECISION
DATED AND FILED

June 11, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP454 **Cir. Ct. No. 2013CV687**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

CHRISTIAN DELGADO-FERNANDEZ,

PETITIONER-RESPONDENT,

V.

MIGUEL ANGEL MORALES-MUNOZ,

RESPONDENT-APPELLANT.

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

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

¶1 PER CURIAM. Miguel Morales-Munoz appeals a circuit court order granting a domestic abuse injunction against him. Morales-Munoz argues that insufficient evidentiary grounds existed for issuance of an injunction, that the court applied the wrong legal standard, and that the court erred in excluding

certain evidence.[1] For the reasons set forth below, we affirm the order of the circuit court.

EVIDENTIARY GROUNDS

¶2 Morales-Munoz argues that the evidence was insufficient to establish reasonable grounds for the court to believe that he had engaged in domestic abuse of the petitioner, C.D. As a related matter, Morales-Munoz asserts that the court failed to consider evidence that he acted against C.D. only in self defense. For the reasons discussed below, we reject these arguments.

¶3 A decision to grant or deny an injunction is within the circuit court's discretion and should be reversed only upon an erroneous exercise of that discretion. ***Sunnyside Feed Co., Inc. v. City of Portage***, 222 Wis. 2d 461, 471, 588 N.W.2d 278 (Ct. App. 1998). In order to grant a domestic abuse injunction, the circuit court must find "reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner." WIS. STAT. § 813.12(4)(a)3. (2013-14).[2] Domestic abuse is defined in several different ways. The definition relevant to this case is found in WIS. STAT. § 813.12(1)(am)1., which defines domestic

[1] No respondent's brief was filed in this matter. Pursuant to our order dated October 3, 2014, the appeal was submitted to the court for decision based only on the appellant's brief and the record on appeal.

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

abuse as "[i]ntentional infliction of physical pain, physical injury or illness" by one adult family member or adult household member against another.[3]

¶4 In his own testimony at the injunction hearing, Morales-Munoz admitted that he grabbed C.D. "by the back of her head by her hair" for "one or two seconds." C.D. testified that Morales-Munoz grabbed her hair hard enough to break off the ends and cause her a headache that lasted two days and required her to take medication for the pain. We are satisfied that the record supports the circuit court's finding that Morales-Munoz caused physical pain to C.D.

¶5 The question becomes, then, whether the evidence was sufficient to support the circuit court's finding that the pain was caused intentionally, as required under WIS. STAT. § 813.12(1)(am)1. Morales-Munoz argues that the answer is no. He asserts that the circuit court failed to consider his own testimony that C.D. was "losing control" and trying to "push into" him, such that he had to act in self defense.

¶6 We disagree with Morales-Munoz, and conclude that the record supports the circuit court's finding that the pain he inflicted on C.D. was intentional. The hearing transcript contradicts Morales-Munoz's contention that the court never considered his self defense argument. The transcript reflects that the court acknowledged that Morales-Munoz said he grabbed C.D.'s hair "to control her," but the court discredited that statement in its weighing of the evidence. Generally, we will not overturn credibility determinations on appeal, and Morales-Munoz fails to persuade us that we should do so here. *See* ***Global***

[3] There is no dispute that the parties were both adult members of the same household during the time period relevant to this appeal.

Steel Prods. Corp. v. Ecklund Carriers, Inc., 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269.

LEGAL STANDARD

¶7 We turn next to Morales-Munoz's argument that the court applied the wrong legal standard to the evidence. Morales-Munoz points out that the circuit court made a statement at the injunction hearing that the "reasonable grounds" standard is "akin to probable cause." Morales-Munoz argues that this statement was significant because, while case law provides that a court does not weigh credibility when it employs the probable cause standard, *see* ***State v. Williams***, 198 Wis. 2d 516, 536, 544 N.W.2d 406 (1996), no such case law exists for the reasonable grounds standard in injunction hearings. *See* ***Welytok v. Ziolkowski***, 2008 WI App 67, 312 Wis. 2d 435, 752 N.W.2d 359 (addressing credibility findings of circuit court in concluding evidence sufficient to support finding that actions constituted harassment for purposes of issuing injunction).

¶8 While we agree with Morales-Munoz that the court did make reference to the probable cause standard, the record does not indicate that the court applied that standard in the injunction proceeding. To the contrary, when the court rendered its oral decision at the conclusion of the injunction hearing, it began by stating that it had to consider whether there were "reasonable grounds." The hearing transcript also reflects that the court did, in fact, consider the witnesses' credibility in making its decision. As stated above, the court did not find Morales-Munoz's testimony on the self defense issue credible. In addition, the court found that, when C.D. testified that Morales-Munoz had not abused her in the past, that testimony added to her credibility because, if she intended to fabricate stories or to embellish, she could have said there was a history of abuse. In light of the

foregoing, we are satisfied that the transcript reflects that the court applied the reasonable grounds standard rather than the probable cause standard.

EXCLUSION OF EVIDENCE

¶9 Morales-Munoz argues that the circuit court erred by excluding C.D.'s prior inconsistent statements as well as an allegation that C.D. was involved in an affair. Our review of the hearing transcript indicates that the prior inconsistent statements Morales-Munoz is referring to were contained in police reports of the domestic abuse incident. Morales-Munoz's trial counsel acknowledged at the hearing that the police reports would reflect that C.D. told law enforcement that Morales-Munoz pulled her hair and that it hurt. However, the record is well established on this point through hearing testimony from Morales-Munoz and C.D., such that the police reports would have been merely cumulative. Evidence can be excluded on the grounds that it is cumulative of already presented evidence, and that decision is one the circuit court has discretion to make and is subject to highly deferential review on appeal. ***State v. Gonzalez***, 2014 WI 124, ¶22, 359 Wis. 2d 1, 856 N.W.2d 580. Morales-Munoz fails to explain what else in the reports might have made any difference to his defense and, thus, we are not persuaded that exclusion of the reports was an erroneous exercise of the circuit court's discretion.

¶10 Morales-Munoz also argues that he should have been permitted to develop testimony that C.D. was involved in an affair with another man. He asserts that this evidence would be relevant to establishing a motive for C.D. to lie about the domestic abuse incident. The circuit court excluded the evidence, concluding that it was not relevant to establishing reasonable grounds for the injunction. We agree. Morales-Munoz's argument that the alleged affair would

have given C.D. motivation to make up her version of the events is speculative, at best.

By the Court.—Order affirmed.

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