

**FILED**  
**03-13-2023**  
**CLERK OF WISCONSIN**  
**COURT OF APPEALS**

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

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DANIELLE JOYCE BEGGS-ZIMMERMAN,

Respondent-Appellant,

Appeal No: 22 AP 2185

Circuit Court Case No: 18 CV 222

LAURA EVELYN PANDOW,

Petitioner-Respondent.

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APPEAL FROM THE STATE OF WISCONSIN CIRCUIT COURT FOR  
GREEN COUNTY, THE HONORABLE DUANE M. JORGENSEN  
CIRCUIT COURT PRESIDING

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**BRIEF OF RESPONDENT-APPELLANT DANIELLE BEGGS-ZIMMERMAN**

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DATED: March 13, 2023

Respectfully Submitted,

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### **STATEMENT OF ISSUES**

The issues presented in this appeal are:

1. Can a motion to vacate a void judgment because of lack of personal service be denied based on laches?

The Circuit Court answered this question, yes.

2. Can a motion to amend a harassment injunction to require Beggs-Zimmerman to “remain at least 200 yards away from petitioner, petitioner’s residence, and place of employment” be granted without notice to Beggs-Zimmerman and without a hearing?

The Circuit Court answered this question, yes.

### **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

The material facts in this case are not in dispute and the legal issues presented involve no more than the application of well-settled law and do not require oral argument. The publication of the Court of Appeal’s decision in this case is not recommended.

### **STATEMENT OF THE CASE**

#### **Nature of the Case**

This is an action for a harassment injunction pursuant to Wis. Stat. § 813.125. Laura Pandow filed a Petition for a Temporary Restraining Order and/or Petition and Motion for Injunction Hearing on October 25, 2018 against her next door neighbor Danielle Joyce Beggs-Zimmerman. (R. 5, 1) The petition requested the court issue a temporary restraining order requiring Beggs-Zimmerman to cease or avoid harassing Pandow, avoid

Pandow's residence and/or premises temporarily occupied by Pandow; avoid contacting Pandow or causing any other person other than a party's attorney or law enforcement officer to contact Pandow, and to have "no contact with either of (Pandow's) daughters." (Id.)

Pandow alleged that on October 22, 2018 at 5:30 a.m. when she was driving out of her driveway, Beggs-Zimmerman was standing in the middle of the driveway with a flashlight in one hand and a long tube of something in the other and when Pandow sped up to go around her, Beggs-Zimmerman started beating on the window and side of the van with her hand and a tube of something and was yelling "you f\*\*\*ing bitch" over and over. (R. 5, p. 4) Pandow alleged later that same day Beggs-Zimmerman told Pandow's 14 and 10-year-old daughters to "tell your f\*\*\*ing mom to stay away from my husband" and to "tell your f\*\*\*ing mom to f\*\*\* some other man, besides my husband." (Id.)

### **Procedural Status of the Case**

The Petition for a Temporary Restraining and/or Petition and Motion for Injunction Hearing was filed on October 25, 2018, (R. 5, 1) a temporary restraining order was signed by the Honorable James R. Beer the same day, and it was set for an injunction hearing on November 5, 2018 (R. 5) Pandow never arranged for service of the temporary order on Beggs-Zimmerman.

A hearing on Pandow's Petition for an injunction was held on November 5, 2018. (R. 10) Beggs-Zimmerman was not present. (Id. pp. 1-8) The court stated it was informed by a Sheriff's Department Deputy that Beggs-Zimmerman, who was incarcerated in the Green County jail that day, had chosen not to attend. (R. 10, 3; R. 36, 1). At the hearing the court asked Pandow whether in the petition she "set forth facts and circumstances which the court should consider in granting an injunction" and "were those true and correct at the

time you signed it?” Pandow also submitted some messages from Facebook she said were from Beggs-Zimmerman (R. 10, 4) The court granted the relief requested in the petition. (R. 8 and 10) The copy of the injunction was then personally served on Beggs-Zimmerman in the jail after the hearing. (R. 26, 1)

Almost four years later, on February 16, 2022, an ex parte request to amend the injunction was faxed by someone from Green Haven Family Advocates purported on behalf of Petitioner Pandow. (R. 12) It asserted the District Attorney’s office recommended the injunction be amended to require Beggs-Zimmerman to stay 200 yards away from Pandow and her property. (R. 12) No proof was provided that this amendment was requested by the District Attorney’s office. That same day, the Honorable Faun M. Phillipson, Green County Circuit Court Judge who had recently replaced Judge Beer, amended the injunction without a hearing and without notice to Beggs-Zimmerman, adding the requirement that Beggs-Zimmerman “must remain at least 200 yards away from petitioner, petitioner’s residence, and petitioner’s place of employment. (R. 11, 3). Beggs-Zimmerman had no notice of the request to amend the injunction until after the amended judgment was granted. (R. 20, ¶ 2)

Beggs-Zimmerman filed a motion to reopen and dismiss the injunction and an affidavit and brief in support of the motion on February 18, 2022. (R 18 and 20). Beggs-Zimmerman stated in her affidavit in support of the motion that she was never served with a copy of the petitioner’s petition for a restraining order. (R. 20) A request for a substitution of Judge was filed on February 21, 2022. (R. 21) Beggs-Zimmerman also filed a motion to vacate the ex parte amendment of Pandow’s injunction. (R. 25) The Honorable Judge Duane M. Jorgenson was assigned to the case on February 22, 2022. (R. 29)

A hearing was held on April 13, 2022 before Judge Jorgenson to address Beggs-Zimmerman's motion to dismiss Pandow's injunction and the ex parte modification of the injunction to prevent Beggs-Zimmerman from coming within 200 yards of Pandow. (R. 51, 1-2) The court denied the motion to dismiss the injunction stating the motion was not timely (R. 51, 5 and 8) The court applied the law of laches and held that Beggs-Zimmerman was on notice that a hearing was being held and declined to attend speculating she may have declined to attend because if she testified at a hearing it could have been used against her in the criminal case against her. (R. 51, 6-7) The court also stated Beggs-Zimmerman was personally served a copy of the injunction after it was granted and did not contest it. (R. 57, pp. 6-8)

The court said the amendment was a clarification of the order and not an ex parte order and denied the motion to vacate the amendment. (R. 51, 10-11) Counsel for Beggs-Zimmerman requested the court issue a written order for appeal purposes. (R. 51, 11) The court failed to issue a written order. (R. 59)

Beggs-Zimmerman filed a Notice of Appeal on June 22, 2022. (R. 43) The Court of Appeals issued an opinion and order on October 31, 2022 dismissing the appeal because a final written order or judgment had not been entered and, therefore, the court lacked jurisdiction. (R. 59)

Beggs-Zimmerman moved the circuit court for entry of judgment on November 4, 2022 and submitted a proposed order which the court signed/entered on November 23, 2022. (R. 62) Beggs-Zimmerman filed a notice of appeal on December 20, 2022. (R. 64)



## Statement of Facts

The facts relevant to the issues in this appeal are set forth in the statements of the Nature of the Case and Procedural Statues of the Case. Those facts are not in dispute.

## ARGUMENT

### **I. THE CIRCUIT COURT'S DISMISSAL OF BEGGS-ZIMMERMAN'S MOTION BASED ON LACHES IS ERRONEOUS AND SHOULD BE REVERSED.**

Wisconsin Stat. §806.07 allows relief from a judgment or order. It provides, in relevant part, “[o]n motion and upon such terms as are just, the court...may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:...(d) [t]he judgment is void....” Wis. Stat. § 806.07(1). A judgment is “void” for purposes of § 806.07 when the court rendering it lacked subject matter or personal jurisdiction. *See Richards v. First Union Sec., Inc.*, 2006 WI 55, ¶ 15, 290 Wis. 2d 620, 714 N.W.2d 913; *Wengerd v. Rinehart*, 114 Wis. 2d 575, 338 N.W.2d 861 (Ct. App. 1983).

In order for the circuit court to have personal jurisdiction over Beggs-Zimmerman, the petition for a harassment injunction had to have been personally served on Beggs-Zimmerman prior to the hearing at which the circuit court granted the injunction. Personal delivery requires that...there must be a direct and actual delivery of the papers to the defendant by the one making service. *Richards v. First Union Sec., Inc.* 2006 WI, 55, ¶ 19. The burden of proof is on the person seeking to reopen and set aside or vacate the default judgment. *Id.*, ¶ 27. The evidence necessary to set aside such a judgment is evidence sufficient to allow a court to determine that the circuit court’s findings of fact were “contrary to the great weight and clear preponderance of the credible evidence. *Id.*

The legal issue whether personal service was sufficient is dependent on the interpretation and application of statutes, and therefore is a question of law which an appellate court reviews de novo. Useni v. Boudron, 2003 WI App 98, P8, 264 Wis. 2d 783, 662 N.W.2d 672. The procedural issues involve questions of law, and are therefore reviewed de novo as well. See Paige K.V. v. Steven G.B., 226 Wis. 2d 210, 225, 594 N.W.2d 370 (1999).

Beggs-Zimmerman's affidavit in support of her Motion to Vacate the Harassment Injunction stated she had not been served the petition prior to the hearing. (R. 20) Pandow did not dispute Beggs-Zimmerman's representation she had not been served the Petition before the injunction was granted. Pandow stated at the April 13, 2022 hearing that she "did not find anything that said she (Beggs-Zimmerman) was served." Pandow then tried to argue that the injunction was valid because Beggs-Zimmerman was in jail at the time of the final hearing, "but she was in jail at the time and they asked her three times if she wanted to go to the hearing which she declined each time, and then they brought her back the signed order." (R.51, p.4) The documentary evidence from the Sheriff's Department submitted as proof of service only relates to service of the final injunction. Deputy Worm #315 "went to get Zimmerman for her injunction hearing and she did not want to go. I offered to her three chances to go, and she chose not to go. Deputy Worm advised he would advise the court." (R. 35) Later, the documentation regarding the service of the injunction on Beggs-Zimmerman after the hearing states "#315 (Worm) brought back paperwork for Zimmerman from court – the Harassment injunction was granted for a four-year period." (R. 35) No evidence in the record shows Beggs-Zimmerman was served with

the petition for an injunction so that she could hire counsel and adequately prepare to defend against Pandow's allegations.

The court found Beggs-Zimmerman was "told there was a hearing; that she declined to attend the hearing; ***that she was served the injunction after the hearing***; and that she waited 3 ½ years to move to vacate the injunction and that was an unreasonable delay that prejudiced Pandow." (R. 51, pp. 4-9) The court based its denial of the motion to vacate the injunction on laches. (R. 51, 4-6) The court said she was "advised of the hearing, declined to attend... [s]o I have to conclude, one, that she was on notice..." and that "***she was provided a copy of the restraining order upon it being issued.***" (R. 51, 5) The court stated "if she would have objected to or wished to have the issue of notice heard, then she should have made that issue known and needed to make that known in a timely fashion. Three and a half years later, a four-year injunction is not timely. (*Id.*) The court held that "the law of laches does apply" and that "by not raising the issue properly and in a timely manner, and whether by a motion to reconsider at the trial court or using the right to appellate review" she was barred from vacating the injunction, (R51, 6) The court said she exercised neither of those rights and consequently Ms. Pandow is then prejudiced by Ms. Beggs-Zimmerman essentially sitting on her rights." (R. 51, 6-7)<sup>1</sup> The court then speculated "either she made a choice because she was facing criminal charges not to contest the injunction, or she simply chose or was advised that a criminal attorney would have advised her and the court should have advised her, if she appeared, that anything that she could or would testify to in that proceeding could be used against her and she may have, I think, elected not to testify, not to contest it." (R. 51, 7)

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<sup>1</sup> The court did not explain how Pandow was prejudiced when in fact she had the benefit of a void judgment.

The court's conclusion that the motion to vacate the injunction was barred by laches is a question of law which the Court of Appeals reviews de novo. Centurytel of Midwest-Kendall v. PSC 2002, WI App 236 ¶ 13, 257 Wis. 2d 837; 653 N.W2d 130. Wis. Stat. § 806.07(1) does not contain a time period after which a motion to vacate a void judgment must be filed. It is well established that a void judgment may be expunged by a court at any time and laches is not a defense. West v. West, 82 Wis. 2d 158, 166, 262 N.W.2d 855 (1970) In Halbach v. Halbach, 259 Wis.329, 331, 48 N.W.2d 617 (1951), the court held:

“[l]aches cannot operate to validate a void judgment and a judgment declared to be void for want of jurisdiction must be vacated notwithstanding the dilatory conduct of the judgment debtor. It is the duty of the court to annul an invalid judgment. 49 C.J.S., Judgments, § 267”

Because the circuit court's denial of Beggs-Zimmerman's motion to vacate the Harassment Injunction was based on the erroneous application of laches to a judgment that is void for lack of personal jurisdiction, this court should reverse the dismissal of the motion and void the injunction and expunge it.

**II. THE CIRCUIT COURT'S AMENDMENT OF THE HARASSMENT INJUNCTION WAS ERRONEOUS BECAUSE IT WAS DONE WITHOUT PROVIDING BEGGS-ZIMMERMAN NOTICE AND AN OPPORTUNITY TO BE HEARD.**

The evidence regarding the process by which the Harassment Injunction was amended to include a provision that Beggs-Zimmerman “remain at least 200 yards away from petitioner, petitioner's residence and petitioner's place of employment” is not in dispute. Someone from Green Haven Family Advocates sent a fax to the court on February 16, 2022 asserting the District Attorney's office recommended the injunction be amended to require Beggs-Zimmerman to stay 200 yards away from Pandow and her property. (R.

12) The same day, the court amended the Injunction to include the requested restriction. (R. 11, 3) The court records establish Beggs-Zimmerman was not given notice of the motion and a hearing was not held. The request/motion was faxed at 12:42 p.m. on February 16, 2022 (R. 12) The amended injunction was entered on February 16, 2022 the day it was requested and was faxed to Green Haven at 6:40 p.m. the same day. (R. 11 and 14) The fax stated, “Please make sure that the Petitioner – Laura Pandow and the Respondent – Dannielle Beggs-Zimmerman get copies of this amended injunction order – we no longer have current addresses on them to mail out.” (Id.) CCAP entries reflect no notice was sent Beggs-Zimmerman and a hearing was not held.

Beggs-Zimmerman moved the court for an order vacating the amended injunction arguing she was never given notice that Pandow sought amendment of the invalid injunction and therefore the amendment was invalid pursuant to Wis. Stats. § 801.14, § 813.125(2) and § 813.125(4) (a)2. (R. 25) At the hearing, Beggs-Zimmerman’s counsel argued there was no legal basis whatsoever to make an ex parte order without giving respondent notice and the right to a hearing. (R. 51, 9)

The court denied Beggs-Zimmerman’s motion to vacate the amendment to the injunction. (R. 51, 9-11) The court “found nothing under Chapter 813” for modification or clarification of an order made by the Court. (R.51, 9-10) The court reverted to the general rules of civil practice. (R. 51, 10) Court said that post judgment it did not see this as being an ex parte order. (Id.) The Court saw it as a clarification and made a judgment of the Court more specific. The Court concluded:

I think what Judge Phillipson did in her action was not an ex parte order but rather a clarification of the original judgment. I don’t know her reasoning behind it. I don’t know what the basis is and I am not sure that she has to give it.

She can rely and I think on the record she was at that point be the Judge on the case. And being successor to Judge Beer she reviewed the Court file and made that determination that it was appropriate to clarify her order, which is what I see this being a clarification of the order she can do so. I think that's permitted and I think that's what she's done and so I'm not going to modify or vacate that clarification of judgment that she made.

(R. 51, 10)

The meaning of a statute and its application to undisputed facts are questions of law reviewed without deference. *Progressive Cas. Ins. Co. v. Bauer*, 2007 WI App 122, P5, 301 Wis. 2d 491, 731 N.W.2d 378. The court's conclusion that the amendment could be made without notice and a hearing is erroneous.

Wisc. Stat. § 801.14(1) provides that "every written motion other than one which may be heard ex parte ... shall be served upon each of the parties." A written motion must be accompanied by notice of the hearing, and both must be served "not later than 5 days before the time specified for the hearing" unless a statute or court order states otherwise. Wis. Stat. § 801.15(4). "All written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte."

Wis. Stat. §813.125, the statute governing a harassment injunction as in this case, does not allow for an ex parte amendment to an injunction. The circuit court acknowledged it had reviewed Wis. Stat. § 813 to see if there was a specific provision in Chapter 813 for modification or clarification of an order and there was none (R. 51, 9) No other statute allows for an ex parte amendment to an injunction. While a circuit court may act on its own motion under § 806.07 Wis. Stat., when it does so, the parties must have notice and an opportunity to be heard. Gittel v. Abram, 2002 WI App 113, 255 Wis. 2d 767, 649

N.W. 2d 661. See also Larry v. Harris, 2008 WI 81, 311 Wis. 2d 326, 752 N.W. 2d 279.

An order issued on a motion that does not comply with Wis. Stat. § 801.14 is void. Stein v. Illinois State Assistance Comm'n, 194 Wis. 2d 775, 783, 535 N.W.2d 101 (Ct. App. 1995) The denial of the motion to vacate the amendment is clearly erroneous and should be vacated.

### **CONCLUSION**

For the reasons set forth above, this court should reverse the circuit court's dismissal of Beggs-Zimmerman's motions to dismiss the injunction and dismiss the ex parte modification of the injunction and declare the injunction and amended injunction void and direct they be expunged.

Dated: March 13, 2023

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### CERTIFICATION OF FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font.

The length of this brief is 3031 words.

Dated: March 13, 2023

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**CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)**

I hereby certify that:

I have submitted an electronic copy of this brief, which complies with the requirements of s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief.

A copy of this certificate has been served with the paper copy of this brief served in all opposing parties.

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### APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with s. 809.19(2) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decision showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so produced to preserve confidentiality and with appropriate references to the record.

Dated: March 13, 2023

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