COURT OF APPEALS
DECISION
DATED AND FILED

November 11, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-0763

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

JENNIFER A. CROOP,

PETITIONER-RESPONDENT,

v.

TOM A. SWEENEY,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: MARYANN SUMI, Judge. *Affirmed in part and reversed in part.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

¶1 PER CURIAM. Tom A. Sweeney appeals from an injunctive order prohibiting him from having contact with Jennifer A. Croop or her children, and from possessing a firearm. He claims there is insufficient evidence to support the

injunction. Upon reviewing the record,[1] we are satisfied there was sufficient evidence to support the trial court's finding that Sweeney had violated § 947.013, STATS. However, we agree that there was insufficient evidence to establish that Sweeney might use a firearm to endanger public safety or cause physical harm to another. We therefore affirm that portion of the injunction prohibiting Sweeney from contacting Croop or her children, but reverse that portion of the injunction prohibiting Sweeney from possessing a firearm.

BACKGROUND

¶2 Croop testified at the injunction hearing that she met Sweeney at a restaurant on November 15, 1998. During the following few weeks, she said he called her, wrote her letters, and saw her in person four times. She said she allowed him to sleep on her couch on two occasions and to accompany her and her children to the movies on another occasion, even though she said she did not really want him along. Croop became uneasy when Sweeney told her details about the murder of one of his friends.

¶3 On December 3, 1998, Croop gave Sweeney permission to take her children to the Discovery Zone, where she was to later meet them. As it turned out, Madison Police Officer Melanie Palmer and her partner were investigating Sweeney's possible involvement in a crime involving a ski mask and gun that same day. They were waiting at Sweeney's apartment when he showed up with Croop's children. The officers called Croop to inform her that Sweeney had her children at his apartment, and Croop asked the officers to bring her children home

[1] Because Croop did not file a response brief, on July 23, 1999, we ordered the appeal to be decided based solely upon the appellant's brief and our review of the record.

to her. She said she had not given Sweeney permission to take the children to his apartment, and she was disturbed to learn that the police had observed pictures of prepubescent girls on his apartment walls.

¶4 Shortly after the police officers returned the children to Croop, Sweeney also showed up at her apartment. He tried to break down her door after one of the officers informed him that Croop did not wish to see him. Croop barricaded herself in the bedroom and called 911. Sweeney, meanwhile, stood out on the lawn, shouting that the president would be contacted and they would phone Croop, and yelling ***Miranda*** warnings at the officers who arrested him for disorderly conduct.

¶5 Officer Palmer testified that the police were unable to locate the gun and ski mask they suspected Sweeney had used in the crime they were investigating (although they found white pants which were consistent with those the offender had reportedly been wearing), and Croop testified she had not personally observed Sweeney with a gun.[2] Based upon the evidence presented, the trial court found reasonable grounds to believe that Sweeney had harassed Croop. It orally stated that it found no clear and convincing evidence to show that Sweeney might use a firearm to cause physical harm to another or to endanger public safety, but nonetheless checked off the firearms restriction on the written injunction order.

STANDARD OF REVIEW

[2] The trial court properly excluded hearsay evidence that Croop's four-year-old daughter had told her that Sweeney had a gun.

¶6 When reviewing the sufficiency of the evidence to support a legal conclusion, we are limited to determining whether the evidence is so lacking in probative value that no reasonable fact finder could have come to the conclusion that was reached. *See* ***State v. Poellinger***, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990). Furthermore, the scope of a harassment injunction lies within the sound discretion of the circuit court. *See* ***W.W.W. v. M.C.S.***, 185 Wis.2d 468, 495, 518 N.W.2d 285, 294 (Ct. App. 1994). A court properly exercises discretion when it considers the facts of record under the proper legal standard and reasons its way to a rational conclusion. *See* ***Burkes v. Hales***, 165 Wis.2d 585, 590-91, 478 N.W.2d 37, 39 (Ct. App. 1991). Because "the exercise of discretion is so essential to the trial court's functioning, we generally look for reasons to sustain discretionary decisions." ***Id***. at 591, 478 N.W.2d at 39 (quoting ***Schneller v. St. Mary's Hosp. Med. Ctr.***, 155 Wis.2d 365, 374, 455 N.W.2d 250, 254 (Ct. App. 1990), *aff'd,* 162 Wis.2d 296, 470 N.W.2d 873 (1991)).

ANALYSIS

¶7 Under § 813.125(4), STATS., a court may grant an injunction ordering a person to cease or avoid the harassment of another if it finds "reasonable grounds to believe" that the person has violated § 947.013, STATS. Section 947.013 prohibits a person from harassing or intimidating another person, as shown by a "pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose." Section 947.013(1)(a) and (1m)(b). Single, isolated acts do not constitute harassment. *See* ***Bachowski v. Salamone***, 139 Wis.2d 397, 408, 407 N.W.2d 533, 537 (1987).

¶8 Sweeney contends that his behavior on December 3, 1998, constituted a single isolated act insufficient to show that he intentionally harassed

Croop. However, both Croop and Officer Palmer testified that on December 3, Sweeney first tried to push his way into Croop's apartment, and then stood outside shouting at officers and yelling to Croop through her window. Thus, Sweeney's conduct on that date was not a single act, but a series of acts within a short time frame. Additionally, Croop testified that Sweeney had previously showed up at her home uninvited, that she objected to seeing him, that she had told her neighbors how uncomfortable she was when he was staying at her place, and that she allowed him to come along with her and her children to the movies only because "he would not leave [her] alone." She said she feared for her life and that of her children based upon the details of the murder he had described to her. This evidence was not so lacking in probative value as to preclude the trial court from determining Sweeney had intentionally harassed Croop in violation of § 947.013, STATS.

¶9 Sweeney next contends that the scope of the injunction, prohibiting him from "having any contact whatsoever with [Croop] or her children" is impermissibly broad, because it is not tailored to prevent the type of acts which led to the injunction. However, Croop testified that Sweeney had called her and written her letters, and that the children hid in her bedroom with her while Sweeney was attempting to push his way into her house and then yelling in the yard. Therefore, the trial court did not misuse its discretion when it fashioned an injunction prohibiting contact of any type, or when it included the children in the injunction.

¶10 Finally, Sweeney argues that the evidence was insufficient to support the firearm prohibition. We agree. There was no direct evidence that Sweeney even owned a gun, and Croop admitted that Sweeney had never physically or verbally threatened her. It appears from the trial court's statements

from the bench that it also found the evidence insufficient on this point, and that the firearm prohibition box was checked on the final written order by mistake. The injunction shall therefore be modified to eliminate the firearm prohibition.[3]

By the Court.—Order affirmed in part and reversed in part.

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

[3] Nothing in this opinion is meant to imply that Sweeney is allowed to possess a firearm if he is otherwise prohibited from doing so in relation to other pending charges or convictions.