COURT OF APPEALS
DECISION
DATED AND FILED

November 8, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-3341

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

KIM DEVALK,

PETITIONER-RESPONDENT,

V.

PATRICIA A. VADNAIS,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County: KATHRYN W. FOSTER, Judge. *Affirmed.*

Before Brown, P.J., Anderson and Snyder, JJ.

¶1 PER CURIAM. Patricia A. Vadnais has appealed from an order enjoining and restraining her from having any contact with the respondent, Kim DeValk, or with any member of DeValk's household. The injunction was issued on November 15, 1999, and is effective until November 15, 2001. Until the

injunction expires, Vadnais is also prohibited from possessing a firearm. We affirm the order.

¶2 DeValk initially petitioned for a temporary restraining order and injunction on September 13, 1999. Following the court commissioner's issuance of an injunction, Vadnais moved the trial court for a de novo review. An evidentiary hearing was held in the trial court on November 15, 1999. Vadnais and DeValk both appeared pro se and testified. At the conclusion of the hearing, the trial court issued an injunction pursuant to WIS. STAT. § 813.125(4)(a) (1997-98).[1] Section 813.125(4)(a)3 permits a trial court to issue an injunction ordering a respondent to cease or avoid the harassment of another person if, among other things, the trial court finds reasonable grounds to believe that the respondent has violated WIS. STAT. § 947.013. A violation of § 947.013(1m)(b) occurs when, with the intent to harass or intimidate another person, the respondent engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and serve no legitimate purpose.

¶3 Although Vadnais appeared pro se in the trial court, she is represented by counsel on appeal. In her appellant's brief, she challenges the adequacy of the trial court's findings. She contends that "[a] specific finding by the trial court without identifying the acts upon which the court based its decision is reversible error." Within the context of this argument she also challenges the

[1] All references to the Wisconsin Statutes are to the 1997-98 version.

sufficiency of the evidence to support the trial court's finding that she engaged in acts of harassment.[2]

¶4 A trial court's findings of fact may not be reversed unless they are clearly erroneous. *See* ***Noll v. Dimiceli's, Inc.***, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983). The trial court is the ultimate arbiter of the credibility of the witnesses. *See* ***id.*** at 644. Where more than one reasonable inference can be drawn from the credible evidence, this court must accept the inference drawn by the trial court. *See* ***id.***

¶5 We conclude that the trial court's findings are adequate and supported by the evidence in the record. At the November 15, 1999 hearing, DeValk testified that she and her husband were longtime friends of Vadnais's estranged husband, Eugene, who moved into a townhouse which adjoined the DeValks' residence after leaving his marital home. DeValk testified that she began receiving "hang up" phone calls on August 30, 1999. She further testified that on the afternoon of August 31, 1999, Vadnais called and said she was "very, very upset" and would come after DeValk and her children. DeValk testified that Vadnais called again in the early evening on August 31, 1999, and said that when she got hold of Eugene's guns she and her son were going to come after DeValk and her children. DeValk testified that she was very upset and screamed. She also

[2] In making this argument, Vadnais also contends that the petition filed by DeValk was deficient. She contends that even though the petition named only DeValk as the victim of the harassment, DeValk sought an injunction covering other unidentified persons. In fact, in her petition DeValk stated that she was requesting a restraining order and did not want Vadnais to contact "me, residence, my children, or send other people over." The injunction granted by the trial court enjoined Vadnais from contacting DeValk or members of her household. Since harassment of members of DeValk's household would also constitute harassment of DeValk, no basis exists to conclude that the petition failed to properly identify the victim or that the injunction was deficient.

testified that she contacted the telephone company on September 1, 1999, for assistance in blocking out calls from Vadnais's telephone number. She further testified that on September 12, 1999, Vadnais's son and nephew appeared in her driveway at approximately 3:30 a.m., got into Eugene's truck, and drove it away after striking DeValk's truck and another vehicle. DeValk admitted, however, that she did not see Vadnais at the scene.

¶6 DeValk's testimony about the events of September 12, 1999, was corroborated by the testimony of Eugene. After listening to their testimony and the testimony of Vadnais, the trial court found that DeValk's testimony concerning the two phone calls was credible, that the calls were made with the intent of harassing or intimidating her, and that they did in fact frighten her. It concluded that these two telephone calls, in conjunction with the events of September 12, 1999, constituted harassment within the meaning of the statutes. While declining to resolve the dispute as to whether Vadnais was present when her son and nephew took the truck, the trial court reasonably noted that one inference was that they obtained the key from her.

¶7 Vadnais objects that the trial court failed to identify which two telephone calls it was relying on in issuing the injunction. However, it is clear from the trial court's decision that it was referring to DeValk's testimony regarding the two telephone calls of August 31, 1999. Based upon those calls and their harassing nature, the trial court could reasonably determine that Vadnais had

engaged in acts which harassed or intimidated DeValk, and that she intended to do so.[3]

¶8 In challenging the trial court's findings, Vadnais relies on a telephone log from the Ameritech Company listing the telephone calls originating from her home in August 1999. However, this document was not introduced into evidence at the November 15, 1999 hearing, nor had it even been filed in the trial court at the time the trial court made its decision. It was simply attached to a letter written by Vadnais to the trial court more than one month after the injunction was issued.

¶9 An appellate court may review only matters of record in the trial court and cannot consider materials outside that record. *See* ***South Carolina Equip., Inc. v. Sheedy***, 120 Wis. 2d 119, 125-26, 353 N.W.2d 63 (Ct. App. 1984). Because the log of Vadnais's August 1999 telephone calls was not part of the record before the trial court at the time it made its decision and was not introduced into evidence at a hearing on a motion for postinjunction relief, it provides no basis for disturbing the injunction on appeal.[4]

¶10 In the injunction the trial court also found by clear and convincing evidence that Vadnais might use a firearm to cause physical harm to another or to endanger public safety. Based upon that finding, the trial court prohibited Vadnais

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[3] We recognize that a single, isolated act does not constitute harassment. *See* ***Bachowski v. Salamone***, 139 Wis. 2d 397, 408, 407 N.W.2d 533 (1987). However, two threatening telephone calls in the same day, followed by the appearance of Vadnais's family members on DeValk's driveway in the middle of the night, resulting in an altercation and property damage, constitute more than a single isolated incident and was sufficient to support the harassment injunction.

[4] We recognize that DeValk's pro se respondent's brief incorporates multiple documents that are not part of the trial court record. We have not reviewed or considered those documents.

from possessing a firearm while the injunction was in effect. *See* WIS. STAT. § 813.125(4m)(a).

¶11 Vadnais contends that the evidence is insufficient to support this finding. We disagree. DeValk testified that in the second telephone call from Vadnais on August 31, 1999, Vadnais said that when she got hold of Eugene's guns she and her son were going to come after DeValk and her children. This testimony was clearly sufficient to support a finding that Vadnais might use a firearm to injure DeValk or her family.

¶12 Vadnais's final argument is that she is entitled to a new trial in the interest of justice because DeValk committed perjury when, in her petition for a harassment injunction, she alleged that telephone calls were made by Vadnais in August 1999 which are not substantiated by the Ameritech log. However, as already noted, this document was merely an attachment to a letter filed by Vadnais. It was not presented as evidence at the November 15, 1999 hearing, nor at any postjudgment evidentiary hearing. It therefore cannot be considered on appeal.

¶13 Vadnais's remaining allegations are simply conclusory and speculative, or are challenges to statements made by DeValk in the petition which were not relied on by the trial court in granting the injunction. These allegations provide no basis for relief on appeal.

By the Court.—Order affirmed.

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