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DISTRICT II

November 9, 2016

To:

Hon. Mark T. Slate
Circuit Court Judge
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Green Lake, WI 54941

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Amy Thoma
Clerk of Circuit Court
Green Lake County Courthouse
P.O. Box 3188
Green Lake, WI 54941

Petitioner

You are hereby notified that the Court has entered the following opinion and order:

2015AP2651 Petitioner v. Roger L. Lang (L.C. # 2015CV106)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Roger Lang appeals from a circuit court order granting a WIS. STAT. § 813.125 (2013-14)¹ harassment injunction against him.² Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21. We affirm.

To grant a WIS. STAT. § 813.125 injunction, the circuit court must find “reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² The harassment injunction petitioner has not filed a respondent’s brief. We decide this appeal based on Lang’s appellant’s brief.

intimidate the petitioner.” Section 813.125(4)(a)3. Whether to grant an injunction is within the circuit court’s discretion, and we review for a proper exercise of discretion. *Welytok v. Ziolkowski*, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. We will uphold the circuit court’s findings of fact unless they are clearly erroneous. *Id.* Whether those findings satisfy the applicable legal standard presents a question of law that we decide independently. *Id.*

Where more than one reasonable inference can be drawn from the credible evidence, we accept the inference drawn by the circuit court as the finder of fact. *Id.*, ¶27. The court is charged with resolving the conflicts in the testimony and assessing the credibility of the witnesses. *Id.*, ¶28.

The harassment petition alleged that Lang was harassing the petitioner in relation to an easement dispute. At the de novo circuit court hearing on the harassment petition, the petitioner testified that he and Lang have an ongoing dispute over the use of an easement. The petitioner sought a restraining order because Lang had, on more than one occasion, screamed and yelled at him and his family member, used profanity and physically obstructed use of the easement by chaining a gate, deploying a rope and placing a large rock in the easement to impede access to the easement. The petitioner’s child testified that Lang blocked their use of the easement and yelled at them. An adjoining landowner testified that the gate obstructed by Lang was on her property, and she had to remove Lang’s obstruction.

Lang, who appeared without counsel, testified that he objects to the use of the easement because he believes the easement is either in litigation or otherwise requires resolution. Lang admitted that he interacted with the petitioner about the easement and restricted the petitioner’s access to the easement. While Lang admitted yelling, he claimed he did so because he could not

get close enough to the petitioner to speak at a normal volume. Lang admitted that his actions in relation to the easement included obstructing a gate which was located on another's property.

The circuit court had to infer Lang's intent to harass or intimidate, WIS. STAT. § 813.125(4)(a)3., from his "acts and statements" "in view of the surrounding circumstances." *Welytok*, 312 Wis. 2d 435, ¶26 (citation omitted). The court found reasonable grounds to believe that Lang had "engaged in harassment with intent to harass or intimidate the petitioner as evidenced by the yelling and screaming and the constant blocking of the easement." The court acknowledged Lang's explanation that he yelled to overcome distance, but the court was persuaded that Lang yelled to harass, a determination that was the circuit court's to make in light of all the evidence. The court ordered Lang to cease harassing the petitioner and interfering with the petitioner's use of the easement.

The circuit court then addressed whether Lang's firearms should be confiscated pursuant to WIS. STAT. § 813.125(4m). The petitioner stated that he was afraid of Lang, whom he described as "scary," and he thought Lang may use a firearm to harm or endanger him or the public. The court barred Lang from possessing firearms.

On appeal, Lang complains that he was compelled to proceed pro se, he had no intent to harass or intimidate, he had a legitimate purpose in interacting with the petitioner, and the evidence was not sufficient to support the circuit court's decision to bar him from possessing firearms.

The record supports the circuit court's finding that Lang had the requisite intent to harass or intimidate the petitioner. The credibility of all of the witnesses was for the circuit court to determine, and we are bound by the court's reasonable inferences from the evidence. While

Lang claims that he had a legitimate purpose in his interactions with the petitioner, it was for the circuit court to make that determination based on “all the facts and circumstances” and the evidence the court deemed credible. *Welytok*, 312 Wis. 2d 435, ¶30 (citation omitted). Given that the easement had been the subject of legal proceedings involving the same parties, the court could determine on this record that Lang’s ongoing engagement with the petitioner and obstruction of the easement lacked a legitimate purpose.

We conclude that the circuit court’s decision to prohibit Lang from possessing firearms is supported by sufficient evidence. A firearm restriction is appropriate if the circuit court issues a harassment injunction and “determines, based on clear and convincing evidence presented at the hearing on the issuance of the injunction, that the respondent may use a firearm to cause physical harm to another or to endanger public safety.” WIS. STAT. § 813.125(4m). Here, the petitioner stated that he feared that Lang might use a firearm. The weight and credibility of this testimony was for the circuit court to decide.

Finally, we address Lang’s complaint that he was forced to proceed without counsel. At the outset of the de novo hearing, which Lang requested, Lang claimed that an attorney who had represented him in other matters was supposed to represent him at the de novo hearing. During a colloquy with the circuit court, Lang made contradictory statements about how recently he had been in contact with the attorney, whether the attorney had agreed to represent him at the hearing, and whether he had decided to discharge the attorney. The court was not convinced that Lang had made arrangements for representation and decided to proceed because Lang had requested the de novo hearing. The court’s findings of fact about Lang’s efforts to arrange for representation are not clearly erroneous, and the court did not err in requiring Lang to proceed without counsel.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to
WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals