

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

March 5, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

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**No. 96-3094**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**CITY OF OWEN, ON BEHALF OF ITS EMPLOYEES AND  
CONTRACTOR EMPLOYEES,**

**PETITIONER-RESPONDENT,**

**V.**

**RODNEY SATONICA,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Clark County:  
MICHAEL W. BRENNAN, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

ROGGENSACK, J. Rodney Satonica appeals an order which enjoins him from contacting any officers or employees of the City of Owen or the employees of contractors working on the Owen Flood Control Project or Highway 29 expansion, for a period of two years. He claims that the harassment injunction

against him was improperly granted because: (1) the court lost competency to proceed when the injunction hearing was held more than fourteen days after the issuance of the temporary restraining order; (2) the proof at the hearing was insufficient to establish that Satonica's actions were motivated by an intent to harass; (3) the circuit court improperly precluded Satonica from presenting evidence relating to self-defense; (4) the injunction was overbroad; and (5) the circuit court erroneously refused to correct alleged errors in the transcript. For the reasons discussed within, we conclude that none of Satonica's arguments have merit; and therefore, we affirm the circuit court.

### **BACKGROUND**

Satonica and his wife lived on a parcel of land located just outside of the City of Owen near state Highway 29, when the City began a flood control project in conjunction with the highway's expansion by the State. Satonica became concerned at the amount of dust generated by trucks carrying numerous loads of fill for the project along an access road which bordered the south side of his property. He felt that the dust might be unhealthy for his soon-to-be-born child. Satonica met with the project manager in October of 1995 and informed him that he was well connected with the militia and would "get" those associated with the project.

Also in the fall of 1995, Satonica began contacting Owen City Clerk Kathleen Frederickson about the project two to three times a week, via phone, fax, mail, in person and through other city employees. The City acknowledged Satonica's concerns, but it did not resolve them to his satisfaction, although it advised him of his right to take legal action if he wished. Satonica never filed a lawsuit, but by the spring of 1996, he was contacting the city clerk two or three

times *per day*. The contacts frequently included obscene language and nasty epithets directed at the clerk, the mayor, the city council and the chief of police. In March of 1996, during a discussion of the flood control project, Satonica told Owen Police Officer Bruce Johnson that he would blow up propane tanks on his property if anyone came near his property line. On May 16, 1996, Satonica threatened to blow up city hall, if his demands were not met. On May 23, 1996, he told Frederickson that he believed he had the right to use whatever force he deemed necessary to protect his family, pursuant to the self-defense privilege under § 939.48(1), STATS. Satonica's threats and daily complaints caused city officials and construction workers to fear for their safety. They necessitated police protection for various stages of the flood control project; and on one occasion, they caused the city clerk to lock up city hall and barricade herself in her own home.

On May 24, 1996, the City petitioned for a harassment injunction. A temporary restraining order was issued *ex parte* on that date and a hearing was set for May 30, 1996. When Satonica had not been served by May 30<sup>th</sup>, the court set over the hearing to June 4, 1996. Satonica was served on June 4<sup>th</sup>, after he had been temporarily out of the state. Therefore, the hearing was again rescheduled. After that third set over, Satonica requested another delay. His request was granted and the hearing was rescheduled for June 24, 1996. Following the June 24<sup>th</sup> hearing, the court issued the injunction requested by the City. The court subsequently declined to grant the parties' requests to correct certain inaccuracies in the transcript and this appeal followed.

## DISCUSSION

### **Standard of Review.**

We do not substitute our judgment for that of the finder of fact when reviewing the sufficiency of the evidence. Rather, unless we determine that the evidence is so lacking in probative value that no reasonable fact finder could have come to the conclusion which was reached, we defer to that conclusion. *State v. Poellinger*, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990). The scope of a harassment injunction lies within the sound discretion of the circuit court. *W.W.W. v. M.C.S.*, 185 Wis.2d 468, 495, 518 N.W.2d 285, 294 (Ct. App. 1994). Thus, we will not disturb an injunction so long as the circuit court rationally applied the appropriate law to the facts of record when granting and fashioning it. *Id.*

### **Competency to Proceed.**

When a petition for a harassment injunction is received, if so requested, a circuit court may issue a temporary injunction, *ex parte*. The injunction lasts for seven days or until a hearing is held on the petition for an injunction under § 813.125(4), STATS., whichever occurs first. A temporary injunction may be extended upon the agreement of the parties or by the court for seven days, if the respondent was not served prior to the expiration of the temporary injunction. Section 813.125(3). A hearing on a petition for an injunction may be had only after the petition, notice of hearing and a copy of the temporary injunction, if any was obtained under § 813.125(3) are served upon the respondent. Section 813.125(4)(a)2.

Satonica argues that the circuit court lost competency to proceed by holding the injunction hearing after the seven-day extension period had expired, without the written consent of both parties. However, because Satonica failed to object to the extension before the circuit court and requested an additional extension himself, we deem the issue waived<sup>1</sup> and decline to address it any further. *Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980).

### **Sufficiency of the Evidence.**

Section 813.125(4)(a)3., STATS., requires the circuit court to find reasonable grounds to believe that the respondent has violated § 947.013, STATS., before it may issue a harassment injunction. Section 947.013(1m) proscribes the actions of a person who, with the intent to harass or intimidate another person:

(a) Strikes, shoves, kicks or otherwise subjects the person to physical contact or attempts or threatens to do the same.

(b) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.

The record contains considerable evidence that Satonica threatened city officials and others with violence numerous times, including references to blowing up city hall, igniting a propane gas explosion near the border of his property, and using his militia connections to “get” those persons associated with the project. Several

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<sup>1</sup> Satonica claims that the issue cannot be waived because it goes to subject matter jurisdiction. However, this court has already noted that the only notice requirement in § 813.125, STATS. is one of procedural due process. See *Bachowski v. Salamone*, 139 Wis.2d 397, 405, 407 N.W.2d 533, 536 (1987). Because procedural notice goes to personal, not subject matter, jurisdiction, it may be waived. See *Mannino v. Davenport*, 99 Wis.2d 602, 607, 299 N.W.2d 823, 825 (1981).

witnesses testified that Satonica's words and actions caused them to fear for their own safety and the safety of others.

Satonica nonetheless argues that he was motivated by a legitimate desire to protect his family, and that the City failed to prove that he had the requisite intent to harass. However, as the City points out:

Whether acts or conduct are done for the purpose of harassing or intimidating, rather than for a purpose that is protected or permitted by law, is a determination that must of necessity be left to the fact finder, taking into account all the facts and circumstances.

*Bachowski v. Salamone*, 139 Wis.2d 397, 408, 407 N.W.2d 533, 537-38 (1987). We have no hesitation concluding that the circuit court reasonably inferred an intent to harass based on the circumstances surrounding Satonica's deliberate and continuous acts and statements.

**Exclusion of Evidence.**

Satonica also claims that the circuit court erroneously exercised its discretion when it excluded testimony about whether the City had supplied Satonica with any documentation on dust levels that he could take to his doctors to verify his belief that those levels were harmful to his prematurely-born son. Satonica claims that the evidence was relevant to the issue of whether his conduct served a legitimate purpose other than harassment.

There are several theories under which the circuit court may have excluded the evidence: that it was not relevant under § 904.01, STATS.; that it exceeded the scope of the direct examination; or that, even if relevant, it would result in "confusion of the issues, ... undue delay, waste of time, or needless presentation of cumulative evidence," within the meaning of § 904.03, STATS.

The court did admit other evidence that Satonica had told the Owen City Clerk that he was concerned about dust control for his son and that he believed he had a statutory right to use force to defend his family and property. However, we note that Satonica failed to make any offer of proof regarding the precise nature of the testimony he hoped to elicit from the City's witness, and we will not consider whether evidentiary error occurred absent a proper offer of proof. Section 901.03(1)(b), STATS.; *State v. Williams*, 198 Wis.2d 516, 538, 544 N.W.2d 406, 415 (1996).

### **Breadth of the Injunction.**

A harassment injunction issued under § 813.125, STATS., “must be specific as to the acts and conduct which are enjoined,” and should be based on the facts actually proven at trial or substantially similar conduct. *Bachowski*, 139 Wis.2d at 414, 407 N.W.2d at 540. The language of the injunction should also be carefully tailored so as to avoid proscribing constitutionally protected activity. *Id.*

Satonica complains that the circuit court's injunction, which enjoined his contact with any City of Owen employee or anyone working on the flood control project, was broader than the conduct proven at trial and infringed on his constitutionally protected rights. We do not agree. Although city workers and those associated with the flood control project do constitute a rather broad class, that is precisely the group of people who had been threatened or intimidated by Satonica. Additionally, the methods of harassment proven at trial included personal contacts, letters, phone calls, faxes and third-party messages. Thus, given the expansive nature of Satonica's actions, we cannot say that a more narrow injunction would have been effective.

The circuit court was also mindful of Satonica's constitutional rights when it crafted the injunction. The court stated that Satonica was not precluded from driving through the streets of Owen or from contacting city officials through his attorney, and it specifically noted that since he did not live in the City of Owen, he was not precluded from contacting his own elected representatives. Nor would the injunction preclude him from obtaining information about the project from his own township or from a state agency or official. Furthermore, since it is well established that "[t]he First Amendment affords no protection to those who utter direct threats of force and violence toward other persons," *U.S. v. Brock*, 863 F.Supp. 851, 858 (E.D. Wis. 1994), and that Wisconsin's state constitution extends no special protection to categories of speech such as fighting words which would tend to incite a breach of peace, *State v. Bagley*, 164 Wis.2d 255, 265 n.3, 474 N.W.2d 761, 765 n.3 (Ct. App. 1991), enjoining Satonica from continuing his pattern of daily, hostile confrontations with those described in the injunction did not impermissibly infringe his free speech rights. The injunction was not constitutionally overbroad.

### **The Record.**

The transcript of the injunction hearing contains numerous typographical errors and transposes the names of the speakers in several instances. Both parties moved the circuit court to correct these inaccuracies; it declined to do so. However, we agree with the City that the overall sense of the injunction hearing was properly preserved by the transcript, and that none of the errors adversely affected a substantial right of a party, within the meaning of § 805.18(1), STATS. Since Satonica has failed to show, or even to allege, any specific prejudice resulting from the errors, we conclude that they are harmless. See *State v. Keith*, No. 96-2332 (Wis. Ct. App. Dec. 30, 1997).



## CONCLUSION

The evidence before the circuit court was sufficient to show that Satonica had intentionally engaged in a pattern of behavior which threatened a large group of city officials and construction workers. The injunction was properly tailored to address the broad range of harassing conduct in which Satonica had engaged and to protect the targets thereof. Any other alleged errors were either waived or are harmless.

*By the Court.*—Order affirmed.

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