COURT OF APPEALS
DECISION
DATED AND RELEASED

APRIL 23, 1997

NOTICE

No. 96-3290-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

GREGORY L. THEW,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County: FREDERICK P. KESSLER, Reserve Judge. *Affirmed.*

ANDERSON, J. We affirm Gregory L. Thew's conviction for violation of a domestic abuse injunction because he has waived the issue he raises on appeal. After filing a motion to dismiss, Thew did not pursue a resolution of his motion collaterally attacking the domestic abuse injunction.

On September 21, 1995, Thew was charged with one misdemeanor count of violating a domestic abuse injunction and was penalized under § 813.12(8), STATS. The injunction had been issued on March 28, 1995, and

prohibited Thew from committing acts of domestic violence against Shannon Voight, including "no violent contact, no threats, no verbal abuse, no yelling."

At a May 9, 1996, court hearing on the status of the criminal case, Thew's trial counsel told the court that it was his intention to challenge the validity of the domestic abuse injunction in civil court. The trial court granted a sixty-day adjournment to permit a collateral attack on the injunction.

On June 3, 1996, Thew filed a motion to dismiss the complaint in the criminal court. He asserted that the domestic abuse injunction was invalid because no evidence was taken to support the allegations of the petition for the injunction; he also attacked the injunction as overbroad and a violation of his First Amendment rights. Thew made a final appearance on June 6, 1996. The first order of business was a correction to the criminal complaint. Thew's counsel then argued for a modification of bail at which time he summarized portions of the civil proceedings that led to the issuance of the injunction. The prosecutor did not respond to this portion of Thew's presentation. In addition, Thew's counsel never alerted the trial judge that he was pursuing the dismissal of the complaint. Accordingly, the trial court did not rule on Thew's motion challenging the validity of the domestic abuse injunction..

The trial court limited its consideration to the argument before it and denied Thew's request for modification of bail. In response to the court's action, defense counsel stated, "Okay. If the Court will allow me—and we planned ahead for this contingency. I was hoping it was—it wasn't going to turn out this way, but I do have a Waiver of Rights form." The trial court then engaged in a plea colloquy with the defendant. The court accepted Thew's "no contest" plea, withheld sentence and placed him on probation for two years.

On appeal, Thew asserts that the domestic abuse injunction is invalid because it was procured by fraud. Thew's argument constitutes a collateral attack on the injunction. Such an attack is not allowed absent a showing of fraud in the procurement of the injunction. *See* ***State v. Bouzek***, 168 Wis.2d 642, 644-45, 484 N.W.2d 362, 364 (Ct. App.1992).

However, we do not have to consider Thew's argument because he failed to raise the issue with any prominence in the trial court. We decline to resolve an issue raised in the pleadings but never argued below. *See* ***State v. Hartman,*** 145 Wis.2d 1, 9, 426 N.W.2d 320, 323 (1988). There are several well-known reasons for this rule. First, it is the role of an appellate court to correct errors made by the trial court, not to rule on matters never considered by the trial court. *See* ***Vollmer v. Luety***, 156 Wis.2d 1, 10-11, 456 N.W.2d 797, 802 (1990). Second, presentation of motions in the trial court permits the State to present evidence and legal argument in opposition to the motion. *See* ***Cappon v. O'Day,*** 165 Wis. 486, 490-91, 162 N.W. 655, 657 (1917). Third, requiring resolution of motions at trial allows the trial judge an opportunity to correct or to avoid errors, thereby resulting in efficient judicial administration and eliminating the need for an appeal. *See* ***Vollmer,*** 156 Wis.2d at 11, 456 N.W.2d at 802 (1990). Fourth, if trial attorneys are not required to raise issues at the trial court level, there is less of an incentive for them to diligently prepare their cases for trial. *See* ***id.***

By the Court.—Judgment affirmed.

This opinion will not be published. *See* Rule 809.23(1)(b)4, Stats.