**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

May 21, 1998

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**



**No. 97-1727**

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

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**GAYLENE OTTESON,**

**PETITIONER-RESPONDENT,**

**V.**

**DANIEL E.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Dane County: STUART A. SCHWARTZ, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Roggensack, JJ.

PER CURIAM. Daniel E. appeals from an order for a two-year harassment injunction. The issues are whether the court heard sufficient evidence to find that Daniel intended to intimidate his victim; whether the injunction is excessively restrictive; and whether it can be enforced against him. We affirm on the first two issues and conclude that the third is not ripe for determination.

Daniel is a cognitively challenged boy who attends public school in Madison. His IQ is 53, placing him in the lowest one-percentile for his age. He is described as having static encephalopathy that results in low IQ, seizure disorders, attention deficit disorders, poor control over moods and impulses, and difficulty in judging risks and consequences.

In the months preceding April 1997, when Daniel was thirteen, he engaged in masturbatory behaviors in the classroom, and was observed staring at women's breasts. School personnel devised a plan to control his inappropriate behavior that involved first warning Daniel to stop or his father would be called. They also devised various indirect commands to key Daniel's understanding because he was not believed to be capable of comprehending a direct order to stop a certain behavior.

In April 1997, Health Care Assistant Gaylene Otteson was present in the physical education facility at Daniel's school with Daniel and one other student. Daniel approached her from behind and brushed up against her. She stepped back and warned Daniel that he was intruding on her space. She also asked to see his book, a request she described as one of the cues used to inform Daniel that he was doing something wrong. She then moved away. Daniel followed and brushed up against her again, this time with what she described as an erection, and made thrusting motions against her with his hips. She ordered him to the principal's office several times, but he refused to go. He then began crying and begged her not to call his father when she started walking to the office.

Otteson commenced this proceeding by filing a petition for a harassment injunction against Daniel under § 813.125, STATS., alleging that the behavior described above violated § 947.013, STATS., and made her feel

threatened. Section 813.125(4) provides in relevant part that the trial court may grant an injunction ordering respondent to cease or avoid harassing another person if, the court finds reasonable grounds to believe that the respondent has violated § 947.013. The latter section provides, in relevant part, that a violation occurs when one, with intent to harass or intimidate another person, engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose. Section 947.013(1)(m).

Applying those statutory standards, the trial court found reason to believe that Daniel engaged in an intentional course of conduct that served no legitimate purpose and he intended to intimidate Otteson. The resulting injunction required Daniel to stay a certain distance away from Otteson, both in their school and in other places, and also ordered him to refrain from having any direct contract with Otteson, "no contact meaning no discussions, no touching, not even saying 'hello.'"

For purposes of § 947.013, STATS., intent means "that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result." Section 939.23(4), STATS. Intent is nearly always proven by circumstantial evidence and by inference from the acts and statements of the person in the circumstances. ***In re Paternity of C.A.S. and C.D.S.***, 185 Wis.2d 468, 489, 518 N.W.2d 285, 292 (Ct. App. 1994). If the trial court's inference on this issue is reasonable, we must accept it even if others are reasonably available. ***Id***.

Here, the evidence allowed the trial court to reasonably infer that Daniel intended to intimidate Otteson. The second and more serious contact with Otteson occurred after she warned Daniel against such behavior. Furthermore,

despite his limited abilities, there was credible evidence that Daniel could understand that warning. Nevertheless, he immediately repeated his conduct in a more aggravated fashion. His subsequent behavior then showed that he knew he had acted inappropriately. Daniel's intent may have been, as his treating psychologist testified, to impulsively gratify a sexual urge without regard to the effect of his action on Otteson. However, from the act itself, under the circumstances in which it occurred, the trial court could also reasonably infer a separate or joint intent to harass or intimidate.

The injunction is not unduly broad. Daniel objects to the provision in the injunction that no contact means "no discussions ... not even saying 'hello,'" because that enjoins conducts dissimilar to the physical touching that prompted the injunction. In ***Bachowski v. Salamone***, 139 Wis.2d 397, 414, 407 N.W.2d 533, 540 (1987), the court noted that an injunction would be drafted too broadly where one who harassed by yelling across the street was enjoined from saying "good morning" to his victims. "Only the acts or conduct which are proven at trial and form the basis of the judge's finding of harassment or substantially similar conduct should be enjoined." ***Id***. Here, however, the trial court was faced with a unique situation. The injunction was directed at a boy with very limited mental abilities, who would be in close proximity to Otteson on every school day. The trial court reasonably concluded that prohibiting all contact between Daniel and Otteson was the optimum way to prevent any harassing conduct, and was also the optimum way to trigger Daniel's understanding of what he could and could not do.

We need not decide whether Daniel's incompetency will prevent enforcement of the injunction against him. That issue can be litigated in the trial court if and when an attempt to enforce it is made. This court does not render

advisory opinions or determine future rights. ***City of Janesville v. Rock County***, 107 Wis.2d 187, 199, 319 N.W.2d 891, 897 (Ct. App. 1982).

*By the Court.*—Order affirmed.

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