COURT OF APPEALS
DECISION
DATED AND FILED

March 15, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Nos. 99-2357
99-2358

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

NO. 99-2357

IN THE INTEREST OF KARLYN R.:

JAMYI W.,

PETITIONER-RESPONDENT,

v.

KEITH H.,

RESPONDENT-APPELLANT.

NO. 99-2358

IN THE INTEREST OF LEANNA R.:

JAMYI W.,

PETITIONER-RESPONDENT,

v.

KEITH H.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Dane County: SARAH B. O'BRIEN, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. Keith H. appeals from two harassment injunctions prohibiting him from having contact with two children who live next door to him. The issues relate to sufficiency of the evidence, the scope of the injunction, and other matters. We affirm.

¶2 The petitions were filed by Jamyi W. on behalf of her two daughters, LeAnna R. and Karlyn R., who were nine and six years old when the petitions were heard. The petitions were filed under WIS. STAT. § 813.125 (1999-2000).[1] That statute allows a petitioner to obtain an injunction ordering the respondent to cease or avoid the harassment of another person, if the court finds reasonable grounds to believe that the respondent has violated WIS. STAT. § 947.013, which is the criminal and forfeiture harassment statute. Section 813.125(4)(a)3.

¶3 After Jamyi filed these petitions, the court appointed a guardian ad litem for the children and held several evidentiary hearings. The evidence at the hearings in June and July 1999 showed that the parties had been next door neighbors for about one year. Relations between the two families were not good, partly because of a property line dispute. There was testimony, some disputed,

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

about the extent of the contacts between Keith and the children. However, the parties appeared to agree that the contacts were all of short duration, and none were overtly abusive or violent. One of the disputed facts was the date that Jamyi first informed Keith that she did not want him to have any contact with the children. Keith testified that it was in May 1999, while Jamyi testified that it was in July 1998. The trial court found that the earlier date was correct. For the issues to be discussed below, it is significant to note that Keith is not challenging this finding on appeal. The court granted both petitions and ordered Keith to have "no contact – direct or indirect" with the children.

¶4 On appeal, Keith argues that the evidence was insufficient on several of the elements that must be shown to prove a violation of WIS. STAT. § 947.013, the criminal and forfeiture harassment statute. That statute provides, as relevant to this case, that it is violated by "[w]hoever, with intent to harass or intimidate another person … [e]ngages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose." Section 947.013(1m)(b). The definition of "intent" is found in WIS. STAT. § 939.23. On appeal, we affirm the trial court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2).

¶5 We first address Keith's argument that the trial court, in analyzing the facts of this case, adopted a new rule of law. The argument is based on parts of the trial court's oral decision where the court said that "virtually all" of Keith's contacts were "in and of themselves seemingly innocent" and the court appeared to say that the evidence of those contacts did not meet the burden of proof to establish a course of harassing conduct. The court made further statements such as: "I think that parents are the protectors of their children, and if the parents make a decision that an adult is not to have contact with the children and the adult

continues to have contact, that that contact is harassing of the children." Keith argues that the trial court thus eliminated the requirement that a petitioner prove the elements of harassment and instead substituted a rule in which an injunction is issued solely on the basis of a person's failure to obey a parent's request for no contact, without regard to the reason underlying the parent's request.

¶6 We disagree with Keith's interpretation of the trial court's analysis. In its discussion of Jamyi's no-contact request, we understand the court to have been relying on that request as a basis to find against Keith on certain elements of the harassment statute. This is confirmed by passages, other than those cited by Keith, in which the trial court related the no-contact request to particular elements. For example, at one point the court said that it would be normal for friendly conversation between neighbors to be construed as serving a legitimate purpose, but that if Jamyi had prohibited Keith from having contact with the children and thereafter he continued to have contact, even in the nature of friendly acts, "that could be construed as serving no legitimate purpose because acting friendly to children who you've been told by the parents not to have contact with is not really a friendly action." In a different passage, the court considered Keith's violation of the no-contact request to be evidence of his intent to harass or intimidate. We conclude that those passages reflect a more accurate description of the court's analysis.

¶7 Turning to the individual elements, Keith argues that the evidence was insufficient to show that he engaged in a "course of conduct." The phrase "course of conduct" is defined as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose." WIS. STAT. § 947.013(1)(a). Keith agrees that there is evidence he spoke with the children on at least a few occasions. However, he disputes that there is anything

about those contacts that establishes "a continuity of purpose," because the contacts were nothing other than "neighborly chit-chat." However, we are satisfied that there was a sufficient basis to determine that he demonstrated a continuity of purpose to contact the children in spite of their mother's request.

¶8 Keith argues that there was insufficient evidence that his conduct harassed or intimidated the children. However, the trial court found that the girls were affected by his contact, and there was testimony from one of the girls and from their therapist that they were upset by it. This was a sufficient basis for this finding.

¶9 Keith also argues that there is insufficient evidence of his intent to harass or intimidate. However, as we discussed above, this finding was based in part on Keith's failure to comply with Jamyi's request that he not have any contact with the children. In addition, an intent to harass could reasonably be inferred from what the trial court described as Keith's sarcastic reaction, as recorded on videotape, when he was told in May 1999 not to have contact with the children.

¶10 Keith argues that the evidence was insufficient to prove the specific factual allegations that were made in the petitions. His argument is based on ***Bachowski v. Salamone***, 139 Wis. 2d 397, 407 N.W.2d 533 (1987), where the court reversed a harassment injunction by stating, "Given the disparity between what was alleged in the petition and what was offered and proven at trial, we conclude that the proof in this case was insufficient as a matter of law." ***Id.*** at 413-14. Keith argues that the petitioners in this case failed to present any evidence of the specific instances of contact that were alleged in the petition. We reject the argument. To save time during the evidentiary hearing, Jamyi was asked to simply read the petitions and confirm that their content was accurate. She did

so. Although she did not testify in detail about these incidents, this was nevertheless evidence in support of the specific allegations.

¶11 Keith also argues that the injunctions are invalid because, by prohibiting all contact, they enjoin behavior which is not harassment. His argument is based on a different portion of the ***Bachowski*** opinion. In that case, the injunction prohibited the respondent from harassing the petitioner or "having any contact with petitioner." The court said that a harassment injunction may enjoin only acts or conduct which are substantially similar to those which are proven at trial and form the basis of the harassment finding. ***Id.*** at 414. The court held that the injunction in that case was too broad because it enjoined contact "which simply would not constitute harassment under the statute, e.g., saying good morning to [the petitioner] or his family." ***Id.*** at 414. We reject Keith's argument because, in the present case, the trial court has determined that it was indeed harassment for Keith to greet the children or to make any other casual or seemingly innocent contact. Therefore, it is proper for the injunction to prohibit all contact of any kind.

¶12 Keith argues that the trial court improperly applied a "best interest of the child" standard. While it is true that the court phrased a question to the children's therapist in those terms, we see no basis to conclude that the court applied such a standard in actually deciding the case.

¶13 Finally, Keith argues that we should summarily reverse because the guardian ad litem did not file a brief. That would not be appropriate in this case because the named respondent in the appeal, Jamyi, did file a brief.

By the Court.—Orders affirmed.

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