COURT OF APPEALS
DECISION
DATED AND FILED

June 20, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-2151

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

LYNN E. SALONEN,

PETITIONER-RESPONDENT,

V.

DUANE G. POWERS,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County: KATHRYN W. FOSTER, Judge. *Affirmed.*

Before Nettesheim, Anderson and Snyder, JJ.

¶1 PER CURIAM. Duane G. Powers appeals from a harassment injunction issued against him at the request of Lynn E. Salonen. Powers argues on appeal that there was insufficient evidence of harassment, that Salonen did not establish that he intended to harass her, and that the harassment injunction is

overly broad. We conclude that there was evidence to justify the injunction and the injunction is not overly broad. Therefore, we affirm.

¶2 Salonen and Powers were involved in a romantic relationship for almost one year. In June 2000, Salonen decided to end the relationship. Powers then made many attempts to contact Salonen by visiting her at home and at her work, by calling her and her friends and family, by approaching her in public places, by having his mother call her, and by attempting to leave her gifts. Salonen rebuffed these attempts, and asked Powers to stop communications with her. She eventually obtained a temporary restraining order, and sought an injunction. At the hearing on the injunction, neither party was represented by counsel and both testified in narrative form as to their version of the events. After hearing the testimony, the court granted the injunction. Powers, now represented by counsel, appeals.

¶3 The first issue Powers raises on appeal is that the proof does not conform to the petition. Powers argues both that the proof at the hearing did not conform to the allegations of the petition, and that Salonen did not present evidence that Powers intended to violate WIS. STAT. § 947.013 (1999-2000).[1]

¶4 The record supports the court's finding that Powers engaged in conduct which violates WIS. STAT. § 947.013(1m). That statute provides in relevant part: "Whoever, with intent to harass or intimidate another person, does any of the following is subject to a Class B forfeiture: ... (b) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose."

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

¶5 Powers argues that since the court found that he intended to rekindle the relationship, he cannot have intended to harass. Intent, however, is "rarely susceptible to proof by direct evidence," but may be established by circumstantial evidence and inferred from the acts and statements of the person, in view of the surrounding circumstances. ***W.W.W. v. M.C.S.***, 185 Wis. 2d 468, 489, 518 N.W.2d 285 (Ct. App. 1994) (citation omitted). In this case, the court found that Powers had engaged in a course of conduct that harassed Salonen. Specifically, the court found that Powers "would not take no for an answer" and continued to attempt to contact Salonen even when she had repeatedly told him she no longer wanted to communicate with him. The court found that the behaviors were repeated and included phone calls, unsolicited gifts, cards and letters, and contacting Salonen's family, clients and friends. The court noted that while Powers may have intended to rekindle the relationship, from an objective standpoint the acts constituted harassment. From this we infer that the court found that Powers intended to harass and we conclude that the evidence supports the court's conclusion that these acts constituted harassment.

¶6 Powers also argues that the proof at the hearing did not conform to the allegations of the petition. In ***Bachowski v. Salamone***, 139 Wis. 2d 397, 412-13, 407 N.W.2d 533 (1987), the supreme court found proof to be insufficient as a matter of law when the allegations of the petition did not match the proof offered at the hearing. In this case, however, the petition filed by Salonen lays out the pattern of annoying and disturbing contacts by Powers. We do not read ***Bachowski*** to require that the proof offered at the hearing must mirror the petition in every detail. Here, the evidence supports the allegations of the petition in most, if not all, of its allegations.

¶7 Powers also argues that the injunction is overly broad under ***Bachowski***. ***Id.*** at 414. We disagree. In ***Bachowski***, the court stated that "[o]nly 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.***

¶8 The court here found that Powers harassed Salonen by repeatedly calling her at work and at home, by calling her friends and her family, and by having members of his family call her, by coming to her job, by approaching her in public places, and by sending her unsolicited gifts, letters and cards. The injunction prohibits Powers from having contact with Salonen "by phone, in writing, any gifts at her place of residence or her place of employment." It also prohibits him from contacting Salonen's son or from having any third person intervene on his behalf. We conclude that the injunction addresses the exact conduct which the circuit court found to constitute the harassing behavior. Therefore, the injunction is not overly broad under ***Bachowski***.

By the Court.—Order affirmed.

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