

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 12, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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.

**Appeal No. 01-0436
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-298

**IN COURT OF APPEALS
DISTRICT III**

**TERRANCE L. MASSEY,

PLAINTIFF-RESPONDENT,

V.

TOM WAKELY,

DEFENDANT-APPELLANT.**

APPEAL from an order of the circuit court for Oneida County:
MARK A. MANGERTSON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Tom Wakely appeals an injunction enjoining him from having any contact with Terrance Massey, using Massey's likeness or publishing any information concerning Massey. Wakely argues that because the trial court did not find that Wakely's allegations were untrue, the injunction

violates his freedom of speech. We reject Wakely's argument and affirm the order.

BACKGROUND

¶2 In November 2000, Massey petitioned for a harassment injunction pursuant to WIS. STAT. § 813.025,¹ requesting that Wakely be prohibited from contacting him in person, by phone or in writing and from using Massey's name, photo or likeness in any publication. Wakely, believing Massey was somehow involved with the theft of his guitar, had disseminated flyers and hung posters in area businesses accusing Massey of tax evasion, lying and theft. The trial court granted the injunction and this appeal followed.²

ANALYSIS

¶3 Wakely argues that because the trial court did not find that Wakely's allegations were untrue, the injunction violates his freedom of speech. The scope of a harassment injunction lies within the sound discretion of the trial court. *W.W.W. v. M.C.S.*, 185 Wis. 2d 468, 495, 518 N.W.2d 285 (Ct. App. 1994). Thus, we will not disturb an injunction so long as the trial court rationally applied

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

² The injunction prohibited Wakely from:

1. Having any contact with the Petitioner, Terrance L. Massey, either face-to-face, by phone, in writing or through the efforts of a third person (other than a licensed attorney);
2. Using Mr. Massey's likeness or publishing any information concerning Mr. Massey, by posting, placing ads in the media, or publication to the general public in any form.

the appropriate law to the facts of record when granting and fashioning the injunction. *Id.*

¶4 Under WIS. STAT. § 813.125(4), a court may grant an injunction ordering a person to cease or avoid the harassment of another if it finds “reasonable grounds to believe” that the person has violated WIS. STAT. § 947.013. A violation of § 947.013(1m)(b) occurs when, with the intent to harass or intimidate another person, one “engages in a course of conduct or repeatedly commits acts [that] harass or intimidate the person and ... serve no legitimate purpose.” To avoid improperly impinging on constitutionally protected behavior, an injunction under § 813.125 must be specific as to the acts and conduct that “do in fact constitute harassment under the statute.” *Bachowski v. Salamone*, 139 Wis. 2d 397, 414, 407 N.W.2d 533 (1987).

¶5 Thus, the issue here is not whether the allegations were true, but rather: (1) whether Wakely’s conduct constituted harassment³ and served no legitimate purpose; and (2) whether the injunction was properly tailored to the present facts. See WIS. STAT. §§ 813.125 and 947.013(1m)(b); see also *Bachowski*, 139 Wis. 2d at 414. At the hearing on Massey’s petition, Wakely testified that in an effort to get his guitar back, he had disseminated flyers and hung posters accusing Massey of tax evasion, lying and theft. Wakely additionally testified that he had taken photographs of Massey and further, that he had tape-recorded his conversations with Massey without Massey’s knowledge.

³ On appeal, Wakely does not expressly contend that his conduct did not constitute harassment.

¶6 Wakely did not dispute that his intent in disseminating the flyers and posters was to “keep putting on more and more pressure” until his property was returned. To that end, the trial court asked Wakely, “How is this type of activity, posting these various notices, going to get your guitar back?” Wakely responded: “It was only after these postings [began] to have some effect on Mr. Massey that he came to me and said, I could have your guitar back to you within 30 days if you apologize to me.”

¶7 Based on the evidence introduced at the hearing, the trial court concluded that Wakely’s conduct was “of the type which would tend to harass or intimidate a reasonable person.” The court, concluding that Wakely’s conduct served no legitimate purpose, further stated: “[A]lthough I am sure that you are fervent in your resolve to get this guitar back, the methodology you’re using here is not legitimate by any standard.” The trial court acknowledged Wakely’s First Amendment rights, but noted that Wakely’s right to free speech ended when he started violating the rights of others. The court specifically admonished Wakely: “You can’t accuse another person of a crime to extort ... property from them or to compel them to do an act against their wishes. ... You are going beyond your right of free speech and getting into libel, slander and potential criminal activity.”

¶8 In consideration of Wakely’s disseminating flyers, hanging posters, confronting Massey and recording conversations, the trial court enjoined Wakely from having contact with Massey, using Massey’s likeness or publishing any information concerning Massey, “by posting, placing ads in the media, or publication to the general public in any form.” The trial court tailored the injunction to eliminate the harassment, while suggesting that Wakely use proper law enforcement channels to ensure the recovery of his guitar.

¶9 Because the circuit court rationally applied the appropriate law to the facts of record when granting and fashioning the injunction, we affirm the order.

By the Court.—Order affirmed.

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

