

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 9, 2010

David R. Schanker
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. 2008AP3165

Cir. Ct. No. 2008CV456

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

LANETTA A.,

PETITIONER-RESPONDENT,

V.

DIANA T.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Chippewa County:
STEPHEN R. CRAY, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Diana T.¹ appeals an injunction enjoining her from making or causing another to make untrue assault or molestation accusations to

¹ Given the nature of this case, we have sua sponte amended the caption to protect the parties' identity.

law enforcement, schools, human service agencies, or other similar agencies concerning Robby M.,² a minor. Diana argues the circuit court erred by concluding her conduct constituted harassment. Alternatively, Diana contends the injunction is overly broad. We reject Diana's arguments and affirm the order.

BACKGROUND

¶2 Diana's children, Helen G. and Anthony G., reside with their father, Anthony G. (Tony), and Lanetta A. Tony has primary placement of the children, while Diana has visitation rights every other week during the summer and every other weekend during the school year. As a result of a series of unsubstantiated allegations that Lanetta's son, Robby, had molested Helen and Anthony, Diana was enjoined from making untrue assault or molestation allegations against Robby. That injunction expired on June 11, 2008, and on July 3, 2008, Diana brought Anthony to the hospital alleging that she found blood in his stool and that he claimed Robby had assaulted him. It is undisputed that the hospital found no evidence of a sexual assault and, after further investigation, the allegations were never substantiated.

¶3 In August 2008, Lanetta, on Robby's behalf, petitioned for another harassment injunction pursuant to WIS. STAT. § 813.125,³ requesting that Diana be further enjoined from making untrue accusations regarding Robby. The petition recounted the "unfounded" July 3 allegation and further claimed: "It is believed

² Although the briefs have identified the minors by their initials, the appellate rules provide that where intended to protect a person's identity, reference to an individual is by first name and last initial. *See* WIS. STAT. RULES 809.19(1)(g) and 809.81(8).

³ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[Diana] will continue to make false allegations in an effort to harass [both Lanetta and Robby] and to attempt to gain headway in her own family case involving the minor children.” After a family court commissioner granted the injunction, Diana moved for a de novo hearing before the trial court. The parties stipulated that the transcript of the hearing held before the court commissioner could be used as part of the evidentiary record before the trial court. After a de novo hearing, the trial court granted the injunction and this appeal follows.

ANALYSIS

¶4 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 if the trial court rationally applied the appropriate law to the facts of record when granting and fashioning the injunction. *Id.*

¶5 Under WIS. STAT. § 813.125(4)(a)3, 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 “engaged in harassment with intent to harass or intimidate the petitioner.” Relevant to this appeal, harassment is defined as follows: “Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.” WIS. STAT. § 813.125(1)(b).

¶6 Here, Lanetta testified about the events leading up to the previous injunction, explaining that Diana had accused Robby of doing “sexual things” to Helen and Anthony. Lanetta indicated that as a result of past allegations, Robby has suffered from depression. During his testimony, Tony added that over the past two years, the family had been contacted by either the sheriff’s department or the

Department of Human Services “at least a half a dozen” times regarding allegations that Anthony was being abused by Robby. At the de novo hearing, Diana testified that during both of the two weekends of placement she had since the hearing before the court commissioner, she brought Anthony to the emergency room. According to Diana, Anthony claimed he had been molested and burned by Robby.

¶7 Based on the evidence introduced at the hearings, the trial court concluded that a pattern of conduct exists where Diana reports her son, Anthony, being assaulted by Robby. The court found: “The accusations have been reported to and investigated by law enforcement and the Chippewa County Department of Human Services ... [and] ... have been found not to be substantiated.” The court further noted that the pattern of conduct had continued since the expiration of the previous injunction and was “detrimental to the reputation of [Robby] as he is accused of committing acts which would be a crime if committed by an adult.” The court additionally found that the repeated unsubstantiated claims have disrupted Robby and his family, and serve no legitimate purpose. Despite Diana’s claim to the contrary, the court properly concluded, based on the facts of record, that her repeated conduct of making unsubstantiated assault claims against Robby constituted harassment pursuant to WIS. STAT. § 813.125(1)(b).

¶8 Diana nevertheless contends that the injunction should be invalidated as overly broad. To avoid improperly impinging on constitutionally protected behavior, an injunction under WIS. STAT. § 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). Here, the trial court tailored the injunction to eliminate the harassment by enjoining Diana from making or causing another to make untrue assault and molestation

accusations against Robby “to law enforcement, schools, human service agencies, or other similar agencies.” To the extent Diana argues the injunction has a “chilling effect” or otherwise hinders her ability to protect her own children, she is merely enjoined from making *untrue* accusations and is not prevented from seeking medical care for her children as she deems appropriate.

¶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.

