

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 29, 2011**

A. John Voelker  
Acting 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. 2011AP572-FT  
STATE OF WISCONSIN**

**Cir. Ct. No. 2010CV1003**

**IN COURT OF APPEALS  
DISTRICT II**

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**JILL GILBERT-WELYTOK,**

**PETITIONER-RESPONDENT,**

**V.**

**TIMOTHY J. ZIOLKOWSKI,**

**RESPONDENT-APPELLANT.**

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APPEAL from orders of the circuit court for Ozaukee County:  
PAUL J. MALLOY, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. Timothy J. Ziolkowski appeals from the order of the circuit court that granted a harassment injunction against him and the order that denied his motion for reconsideration. Pursuant to this court's order of March 30, 2011, and a presubmission conference, the parties have submitted

memo briefs. *See* WIS. STAT. RULE 809.17 (2009-10).<sup>1</sup> After reviewing those memoranda and the record, we affirm the orders of the circuit court.

¶2 In 2006, the circuit court granted a harassment injunction against Ziolkowski at the request of Jill Gilbert Welytok. The injunction was imposed for four years, the maximum amount of time allowed by the statute. *See* WIS. STAT. § 813.125(4)(c). We affirmed the circuit court’s decision. *See Welytok v. Ziolkowski*, 2008 WI App 67, 312 Wis. 2d 435, 752 N.W.2d 359.<sup>2</sup>

¶3 When the injunction was about to expire, Welytok moved the circuit court for another harassment injunction. The circuit court held a hearing on the motion. The court noted that the case was “very disturbing.” The court went on:

[L]ooking at the dynamics of it that have been presented in front of me and the credibility determinations and the appearance of the witnesses on the stand, I still think that the reasons still exist for continuing that harassment injunction.

Nothing has improved over the four years in this matter. The only thing that hasn’t happened is—I think the harassment has been channeled into a civil suit, which is a legitimate way to go. But I think if this order that I entered is not continued, that will give the green light to Mr. Ziolkowski to do what Mr. Ziolkowski wants to do. He is a very smart man; and he has the ability, technically and legally, I think, to harass Ms. Welytok. It’s clear to me that she, on the stand, is very distressed by the whole thing.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

<sup>2</sup> The facts that led to the injunction are explained at length in the opinion. *See Welytok v. Ziolkowski*, 2008 WI App 67, ¶¶2-22, 312 Wis. 2d 435, 752 N.W.2d 359. We will not repeat them here.

The court concluded that the order was necessary to prevent “the very flagrant” harassment that had taken place.

¶4 Ziolkowski moved for reconsideration of the court’s order. Ziolkowski argued that the statute limited an injunction to four years, that there was no evidence of any harassment in the past four years, and that the court had no authority to continue the injunction. The court said that it had not just continued the injunction, but that there had been “a separate and distinct hearing.” The court noted that nothing had happened in that four-year period because Mr. Ziolkowski was the subject of a harassment restraining order, and had he violated that order he could have been charged with a misdemeanor. The court stated it was entitled to take judicial notice of the hearing on the 2006 injunction, and found that Ziolkowski “was waging a vendetta against Ms. Welytok.” The court then said that it had issued a new injunction with the same terms as the previous one, and that it did not have to wait for an incident to occur before granting a new injunction if the reasons the initial order had been granted were still present. The court found that those reasons still existed, and, consequently, there were reasonable grounds for the new order. The court denied the motion to reconsider.

¶5 Ziolkowski argues to this court that the circuit court did not have the authority to continue the injunction beyond the four years provided by statute. We need not decide this issue, however, because the record shows that the circuit court did not merely continue the injunction, but instead, the court held a new hearing.

¶6 Ziolkowski then argues that the circuit court was without the authority to take judicial notice of the previous hearing. He argues that it was “fortuitous” that in this case the hearing was before the same judge, and that the statute requires that there be an entirely new hearing before an injunction may

issue. As we have said, however, the circuit court held a new hearing before issuing this injunction. The issue before us, therefore, is whether the court properly considered the evidence from the previous hearing. We conclude that it did.

¶7 In our decision in the previous appeal in this case, we explained the standard of review to be applied in this situation.

To grant an injunction under WIS. STAT. § 813.125, the circuit court must find “reasonable grounds to believe that the respondent has [violated WIS. STAT. §] 947.013.” Sec. 813.125(4)(a)3. This presents a mixed question of fact and law. We will not set aside the circuit court’s factual findings unless they are clearly erroneous. WIS. STAT. § 805.17(2). We independently review the circuit court’s conclusion, based on the established facts, whether such reasonable grounds exist. Whether Jill has met her burden of proof also is a question of law, as is applying a statute to those facts which are undisputed. Our review entails yet one more step. Section 813.125(4)(a) provides that a judge may grant an injunction if certain conditions are satisfied, implying the exercise of discretion. Therefore, whether or not to finally grant an injunction is within the sound discretion of the circuit court, and our review ultimately is limited to whether that discretion was properly exercised.

The scope of an injunction is within the sound discretion of the trial court, and the limited scope of our review of discretionary rulings is well settled. We may not overturn a discretionary determination that is demonstrably made and based upon the facts of record and the appropriate and applicable law. Also, because the exercise of discretion is so essential to the trial court’s functioning, we generally look for reasons to sustain discretionary rulings. Injunctions, of course, must be specific as to the prohibited acts and conduct in order for the person being enjoined to know what conduct must be avoided.

*Welytok*, 312 Wis. 2d 435, ¶¶23-24 (citations omitted).

¶8 We reject Ziolkowski’s argument that the circuit court erred when it considered the facts that gave rise to the first injunction. Ziolkowski’s argument

suggests that the statute prohibits the court from considering conduct that occurred before the first injunction was issued. The statute requires the petitioner to identify in her petition “any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent.” WIS. STAT. § 813.125(5)(a)4. There is nothing in the statute that suggests that the court cannot, then, consider the facts of the identified proceeding. We conclude that the circuit court did not err by considering the facts that were adduced at the hearing on the first injunction.

¶9 Ziolkowski also argues that the injunction was not warranted because he did not engage in any of the harassing conduct that led to the first injunction being issued. The circuit court found, however, that Ziolkowski did not engage in the same type of harassing conduct in the four years prior to the new hearing because if he had engaged in the harassing conduct, he could have been charged with a misdemeanor. In other words, the injunction was effective. The court also found that Ziolkowski, once freed from the restraints imposed by the injunction, was likely to engage in the same type of conduct. We see no reason to disturb these findings. The court is not required to allow the harassing conduct to start again before issuing another injunction.

¶10 We conclude that the circuit court did what it was required to do by statute. Welytok requested a new injunction. The circuit court held a hearing, considered the evidence, and properly exercised its discretion to issue a new injunction with the same terms as the old one.

¶11 For the reasons stated, we affirm the orders of the circuit court.

*By the Court.*—Affirmed.

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

