

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 12, 2012

Diane M. Fremgen
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. 2011AP1701

Cir. Ct. No. 2011CV261

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

BARBARA J. PATON,

PETITIONER-RESPONDENT,

V.

FRANK W. LEFRERE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
EMILY S. MUELLER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Frank W. LeFrere appeals from a circuit court order granting a harassment injunction against him. LeFrere contends that the petitioner, Barbara J. Paton, failed to meet the burden of proving that harassment occurred. He further contends that the circuit court erroneously exercised its

discretion as it failed to consider whether he had the intent to harass or intimidate Paton and whether his conduct during the most recent incident between them had a legitimate purpose. We reject his claims and affirm the order.

¶2 LeFrere and Paton dated for approximately four and one-half years. Since their relationship ended, Paton has filed several restraining orders against LeFrere.

¶3 Paton filed her first restraining order against LeFrere in 2003. She accused LeFrere of assaulting her son and threatening her, her children, and her grandchildren. The circuit court issued an injunction against LeFrere for two years. LeFrere violated the injunction by driving by Paton's home, and he was criminally prosecuted for his action.

¶4 Paton filed her second restraining order against LeFrere in 2005. Again, the circuit court issued an injunction against LeFrere for two years. Again, LeFrere violated the injunction by driving by Paton's home, and he was criminally prosecuted for his action.

¶5 Paton filed her third restraining order against LeFrere in 2007. Again, the circuit court issued an injunction against LeFrere—this time for four years. Although LeFrere engaged in conduct that arguably violated the injunction, he was not criminally prosecuted for his action.¹ However, he agreed to a probation revocation and spent ninety days in jail.

¹ In 2009, LeFrere parked his vehicle nose-to-nose with Paton's vehicle in a grocery store parking lot and entered the store shortly after she did. It appears that the State declined prosecution of this incident, in part, because LeFrere was not properly served with the 2007 injunction. LeFrere later agreed to service, and the parties agreed that the injunction would be in effect until 2011.

¶6 Following the expiration of the third restraining order, Paton filed this current action. She asked the circuit court to find that LeFrere had engaged in a course of conduct or repeatedly committed acts that harassed or intimidated her and that served no legitimate purpose. After a hearing on the matter, the circuit court agreed with Paton and issued another injunction against LeFrere for four years. This appeal followed.

¶7 On appeal, LeFrere contends that Paton failed to meet the burden of proving that harassment occurred. He further contends that the circuit court erroneously exercised its discretion as it failed to consider whether he had the intent to harass or intimidate Paton and whether his conduct during the most recent incident between them had a legitimate purpose.

¶8 To grant an injunction under WIS. STAT. § 813.125 (2009-10),² the circuit court must find “reasonable grounds to believe” that a person has engaged in harassment. *See* § 813.125(4)(a)3.; *see also Welytok v. Ziolkowski*, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. This determination presents a mixed question of fact and law. *Welytok*, 312 Wis. 2d 435, ¶23. We will not set aside the circuit court’s factual findings unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). We independently review the court’s conclusion as to whether, based on the established facts, such reasonable grounds exist and whether Paton has met her burden of proof. *See Welytok*, 312 Wis. 2d 435, ¶23. Finally, discretion also comes into play because § 813.125(4)(a) provides that a judge “may” grant an injunction if certain conditions are satisfied. *See Kotecki & Radtke, S.C. v. Johnson*, 192 Wis. 2d 429, 447-48, 531 N.W.2d 606 (Ct. App.

² All references to the Wisconsin Statutes are to the 2009-10 version.

1995). We will not overturn a discretionary determination that is demonstrably made and based upon the facts of record and the appropriate and applicable law. *See State v. Seigel*, 163 Wis. 2d 871, 889, 472 N.W.2d 584 (Ct. App. 1991). Furthermore, because the exercise of discretion is so essential to the circuit court’s functioning, we generally look for reasons to sustain discretionary rulings. *Steinbach v. Gustafson*, 177 Wis. 2d 178, 185, 502 N.W.2d 156 (Ct. App. 1993).

¶9 Upon review of the record, we are satisfied that Paton met her burden of proving that harassment occurred. As noted by the circuit court at the conclusion of the injunction hearing, “every couple of years or so some significant incident occurs. Either there’s another restraining order, or Mr. LeFrere violates or makes an admission of a violation, and he goes to court or he goes to jail.” These incidents, which spanned several years, provided reasonable grounds to believe that LeFrere had engaged in a course of conduct or repeatedly committed acts that harassed or intimidated Paton and that served no legitimate purpose. *See* WIS. STAT. § 813.125(1)(b).

¶10 Likewise, we are satisfied that the circuit court properly exercised its discretion in granting the injunction. The fact finder necessarily determines intent, taking into account all the facts and circumstances. *See Bachowski v. Salamone*, 139 Wis. 2d 397, 408, 407 N.W.2d 533 (1987). Here, the court implicitly found that LeFrere’s repeated incidents—both criminally prosecuted and otherwise—evinced an intent to harass or intimidate Paton. The court further found that the earlier injunctions had been effective and that “it is likely that there hasn’t been more trouble because [they] have been in effect.” Given these findings, which are not clearly erroneous, we cannot say that the court erroneously exercised its discretion in granting the injunction.

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

By the Court.—Order affirmed.

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

