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**DISTRICT II**

October 16, 2013

To:

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Ozaukee County Circuit Court  
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You are hereby notified that the Court has entered the following opinion and order:

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2013AP1145-FT

Katelin Kammerer v. Jeremy Shakula (L.C. #2013CV194)

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

Jeremy Shakula appeals from a circuit court order entering a WIS. STAT. § 813.125 (2011-12)<sup>1</sup> harassment injunction against him. Pursuant to a presubmission conference and this court's order of July 8, 2013, the parties submitted memorandum briefs. Upon review of those memoranda and the record, we reverse because the communications from Shakula to Katelin Kammerer had a legitimate purpose. Therefore, the criteria for an injunction were not satisfied.

After a brief physical relationship with Shakula, Kammerer became pregnant and gave birth to their child. At the hearing on her injunction petition, Kammerer testified that "ever since I've told him I was pregnant [in January 2012] he has nonstop harassed me and sent me nasty e-

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

mails and text messages.” In response to the court’s question about how often she was receiving messages from Shakula, Kammerer responded, “They’re really random. So it’s just—it could be once a month.” But, when the messages come, Shakula sends her as many as ten or twelve messages over the course of a day. Kammerer testified that Shakula’s messages were nasty and criticized her as a person and a mother. She claimed she did not feel “safe enough.”

On cross-examination, Kammerer conceded that Shakula’s messages revealed that he was angry when he learned she was pregnant after she had assured him she used birth control, and Shakula expressed doubt that he caused the pregnancy. Kammerer acknowledged that she and Shakula did not know each other very well before they had sex. Kammerer’s messages to Shakula expressed her frustration with Shakula’s response to the pregnancy.<sup>2</sup> In one of his messages, Shakula informed Kammerer that if the child were his, he intended to be part of its life. He also inquired regarding Kammerer’s plans and how she would support the child. Kammerer and Shakula also disagreed about the child’s last name, whether the child would be circumcised, and the role being played in the child’s life by Kammerer’s current companion.

Shakula conceded that he said insensitive things to Kammerer because he was angry about the pregnancy. Shakula testified that he was frustrated at being excluded from the child’s life. Paternity proceedings and DNA tests confirmed that Shakula is the child’s father. Shakula wants a role in the child’s life.

In arguing against the injunction, Shakula contended that his contacts with Kammerer had a legitimate purpose: was the child his or was Kammerer misleading him, should the child

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<sup>2</sup> Each party’s messages were heated, insulting and profane.

be circumcised, whose last name should the child have, how Kammerer would support the child, and whether he could see the child. Shakula denied that his purpose was to harass or intimidate Kammerer; rather, he was expressing frustration and voicing his opinions for a legitimate purpose. For these reasons, Shakula argued, Kammerer did not establish grounds for a WIS. STAT. § 813.125 harassment injunction.

Kammerer countered that she thought Shakula would be out of the lives of her and her child until the State commenced a paternity action, and Shakula started seeking a role in the child's life.

The circuit court found that Shakula:

[R]epeatedly commit[ted] acts which harass[ed] or intimidate[d] the individual and which serve[d] no useful purposes. Texting somebody, you know, 10 or 15 or more times a day and calling them names does harass the individual, it doesn't serve any legitimate purpose. It may have served a purpose in his mind to vent his frustrations. But that isn't a legitimate purpose under the circumstances here.... [S]imply texting and venting frustrations on someone isn't a legitimate purpose. I'm satisfied that she's met her burden of proof. I have to grant the harassment injunction.

On appeal, Shakula challenges the injunction. We apply the following standards of review:

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. We independently review the circuit court's conclusion, based on the established facts, whether such reasonable grounds exist. Whether [the petitioner] 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.

*Welytok v. Ziolkowski*, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359 (citations omitted).

Based on the foregoing, we are charged with independently reviewing the facts found by the circuit court to determine whether those facts establish reasonable grounds to believe that Shakula violated WIS. STAT. § 947.013. A violation of § 947.013 occurs when:

[T]he actor, “with intent to harass or intimidate another person ... [e]ngages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.” Sec. 947.013(1m)(b). A “course of conduct” is a “pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.” Sec. 947.013(1)(a). WISCONSIN STAT. § 939.23(4) defines “with intent to” as meaning “that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result.”

*Welytok*, 312 Wis. 2d 435, ¶25.

“[A] violation of WIS. STAT. § 813.125 may not rest on conduct that serves a legitimate purpose.” *Welytok*, 312 Wis. 2d 435, ¶30. The circuit court found that “texting and venting frustrations” is not a legitimate purpose. Although the court referred to the legitimate purpose criterion of § 813.125, the court did not also consider that criterion in the context of the interactions between Kammerer and Shakula: impending parenthood and parenthood after a minimal personal relationship, Shakula’s attempts to come to terms with the pregnancy, and his request to be involved in the child’s life.

“[W]here only one reasonable inference may be drawn from the evidence, the drawing of that inference is a question of law, which we review independently.” *Welytok*, 312 Wis. 2d 435, ¶26. In addition to the parties’ testimony at the injunction hearing, the evidence in the record consists, in large part, of messages between the parties (exhibit 1). The messages dated January 12 and after indicate that the parties were communicating regarding the possible and, later, confirmed pregnancy, whether Kammerer had been using birth control, and what was going to happen with the pregnancy and the child. It is beyond dispute that the messages relate to the pregnancy and decisions regarding the child.

We conclude that the only reasonable inference from the evidence is that there was a legitimate purpose for the parties’ interactions, even if they were mutually heated, insulting and profane. The facts did not establish reasonable grounds to believe that the purpose of the interactions was to harass or intimidate.<sup>3</sup> Because the criteria for an injunction were not satisfied, the circuit court misused its discretion when it entered the injunction. *Id.*, ¶23. We reverse.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is reversed.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*

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<sup>3</sup> We do not suggest that interactions regarding a child could not constitute harassment or intimidation such that a WIS. STAT. § 813.125 injunction would be warranted. We only hold that the record in this case does not support the injunction entered by the circuit court.