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DISTRICT II

April 17, 2019

To:

Hon. Michael J. Aprahamian
Circuit Court Judge
Waukesha County Courthouse-Br. 9
515 W. Moreland Blvd.
Waukesha, WI 53188

David V. Jennings III
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John K. Borowski, Jr.

Marylou Mueller
Clerk of Circuit Court
Ozaukee County Circuit Court
1201 S. Spring St.
Port Washington, WI 53074-0994

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

2017AP2394

Petitioner v. John K. Borowski, Jr. (L.C. #2017CV404)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

John K. Borowski, Jr., appeals from a circuit court order issuing a harassment injunction against him. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

On October 17, 2017, D.M.G. filed a petition for a harassment injunction against her former spouse, Borowski. The petition alleged that Borowski had harassed her by making threatening statements. D.M.G. had previously obtained a domestic abuse injunction against Borowski, which expired on September 30, 2017.

The circuit court held a hearing on the petition. There, it heard from several witnesses, including D.M.G. and Borowski. It also considered various exhibits, including e-mail and Facebook postings from Borowski. Ultimately, the court granted D.M.G.'s petition and issued a harassment injunction against Borowski for two years.² This appeal follows.

A circuit court may issue a harassment injunction if the court “finds reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner.” WIS. STAT. § 813.125(4)(a)3. “Harassment” is defined as “[e]ngaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.” Sec. 813.125(1)(am)2.

Whether to issue a harassment injunction rests within the circuit court's discretion. *Welytok v. Ziolkowski*, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. We will uphold the court's factual findings unless they are clearly erroneous. *Id.* Whether those findings meet the legal standard for issuing an injunction is a question of law that we decide independently. *Id.*

On appeal, Borowski contends that the circuit court erroneously exercised its discretion in issuing the harassment injunction against him. He disputes the court's conclusion that he

² The circuit court also extended the domestic abuse injunction against Borowski in a separate case that is outside the scope of this appeal.

harassed D.M.G. He also accuses the court of punishing him for exercising his constitutional rights. We are not persuaded by Borowski's arguments.

Here, the record contains sufficient evidence to support the circuit court's determination of harassment. D.M.B. testified at length about Borowski's history of domestic abuse, which led to the earlier injunction against him. She also introduced exhibits showing Borowski's actions since that injunction was issued. This included an e-mail from Borowski to D.M.B.'s boyfriend, warning him to stay away from his daughter who lived with D.M.B. It also included disturbing postings on Borowski's Facebook page such as a lengthy rant complaining about his exes, memes appearing to wish his exes physical harm,³ and a photograph of himself with a gun.⁴ From this, the court could reasonably conclude that Borowski had engaged in a course of conduct which harassed or intimidated D.M.B. and which served no legitimate purpose.

As for Borowski's constitutional concerns, we note that rights like freedom of speech are not absolute and can be restricted when one engages in harassment with intent to harass or intimidate. See *Board of Regents-UW Sys. v. Decker*, 2014 WI 68, ¶45, 355 Wis. 2d 800, 850 N.W.2d 112. That is precisely what happened here.

For these reasons, we are satisfied that the circuit court properly exercised its discretion in issuing the harassment injunction against Borowski. Accordingly, we affirm.⁵

³ The memes conveyed such messages as, "If you see my alienating ex feel free to slap that child abuser," "Little black book of people I want to throat punch," and "There are times I miss you so much, I wish I could remember where I hid your body."

⁴ The previously obtained domestic abuse injunction contained a firearms restriction. The circuit court expressed concern that Borowski had not properly complied with it as evidenced by the photograph and D.M.B.'s testimony about the numerous guns Borowski owned.

⁵ To the extent we have not addressed any other argument raised by Borowski on appeal, the argument is deemed rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to
WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals