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DISTRICT III

September 7, 2022

To:

Hon. Maureen D. Boyle
Circuit Court Judge
Electronic Notice

Jacqueline Renee King

William Russell Roberts

Sharon Millermon
Clerk of Circuit Court
Barron County Justice Center
Electronic Notice

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

2019AP2361

Jacqueline Renee King v. William Russell Roberts
(L. C. No. 2019CV324)

Before Stark, P.J., Hruz and Gill, 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).

William Roberts, pro se, appeals an injunction ordering him to cease and avoid contact with and harassment of Jacqueline King.¹ Roberts contends that his actions did not amount to

¹ King also appears in this appeal pro se. After being notified of her failure to file a response brief and the potential consequences of not doing so, she submitted a one-page letter to this court asking us to affirm the injunction order. In her letter, King appears to ask this court to sua sponte add two additional years to the order, which this court is unable to do.

Additionally, King makes factual allegations that do not appear in the record below. Because our review is limited to the circuit court record transmitted on appeal, we do not consider any such allegations. We apply this same rule to Roberts' briefing as well, to the extent he makes factual allegations not found by the circuit court or not otherwise supported by the record. Indeed, much of Roberts' briefing lacks appropriate record citations to support his factual allegations.

the legal definition of harassment under WIS. STAT. § 813.125 (2019-20).² Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

On September 30, 2019, King filed a Petition for Temporary Restraining Order and/or Petition and Motion for Injunction Hearing, identifying harassment as its basis and Roberts—with whom she had an intermittent dating relationship—as the respondent. In her statement supporting the petition, King noted that she had avoided all contact with Roberts since the two of them had separated two months prior. King further alleged that, in the preceding days, Roberts twice called her by phone and she refused to answer, and that he showed up at her home at night, while she was asleep, “banging on [her] door” before he eventually left. The next day, King saw Roberts drive by her home. The circuit court granted a temporary restraining order the same day the petition was filed, and it set an injunction hearing date.

On October 31, 2019, the circuit court held an evidentiary hearing on the injunction petition. Given that neither party was represented by counsel at the hearing, the court questioned each of them under oath. King’s testimony mirrored and elaborated on the allegations in her petition. In particular, King stated that despite her “want[ing] nothing to do with him,” Roberts’ attempts to call her and his driving by her home had happened on multiple occasions over a period of time. Both parties acknowledged that King previously had a restraining order against Roberts, which she terminated in order to allow Roberts to help her with medical needs. King also testified that Roberts’ conduct around her home intimidated and upset her.

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Roberts, on the other hand, largely denied the allegations—including that he did anything other than knock on King’s door the night of September 28, 2019—and he suggested that King’s allegations were false and retaliatory against him. In particular, Roberts claimed he was at King’s home on September 28 to place a notice letter on her door regarding King’s failure to pay him in full for tires she took, a notice he claimed to have taped to her door. The purported notice was presented at trial as an exhibit. King denied ever seeing a notice on her door or at any time before Roberts presented it at the hearing, and she rejected Roberts’ claim that she had previously made a partial payment for the tires. Roberts also claimed that he had driven by King’s home only to visit one of King’s neighbors.

Following the parties’ testimony, the circuit court found that there was sufficient evidence to issue an injunction order against Roberts for a period of four years—i.e., until October 31, 2023. The court recounted the relevant testimony from the hearing—much of it conflicting—and made findings of fact. In particular, the court noted that while King had made a number of prior attempts to keep Roberts from communicating with her—including removing her home phone line and blocking him from her mobile phone—he continued attempting to make physical contact with her. The court also stated that, to the extent there was a dispute over the tires, Roberts had nonintrusive ways of handling that matter rather than showing up at King’s home at night and pounding on her door. Roberts now appeals.

Under WIS. STAT. § 813.125(4), a circuit 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 respondent has engaged in harassment with intent to harass or intimidate the petitioner.” *See* § 813.125(4)(a)3. This finding presents a mixed question of fact and law. ***Board of Regents- UW Sys. v. Decker***, 2014 WI 68, ¶20, 355 Wis. 2d 800, 850 N.W.2d 112. A reviewing court will

uphold the circuit court’s factual findings unless they are clearly erroneous, but whether reasonable grounds exist to grant the injunction is a question of law that we review de novo. *Id.*

As relevant to this case, WIS. STAT. § 813.125(1)(am)4.b. defines “harassment” to mean, “[e]ngaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.” This statutory definition of harassment is the one to which the circuit court tied its factual findings, noting that it seemed the most applicable.³ For purposes of § 813.125(4)(a)3., intent means “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.” *See* WIS. STAT. § 939.23(4). Intent is nearly always proven by circumstantial evidence and by inference from the acts and statements of the person and the circumstances. *W.W.W. v. M.C.S.*, 185 Wis. 2d 468, 489, 518 N.W.2d 285 (Ct. App. 1994). If the circuit court’s inference on this factual issue is reasonable, we must accept it, even if other inferences are also reasonable. *Id.*

Roberts argues on appeal that “[n]othing that has been complained of by [King] in this case amounts to intentional harassment or intimidation of [King].” In many respects, Roberts’ arguments on appeal are undeveloped and ignore the circuit court’s findings of fact, most of which were contrary to Roberts’ testimony and some of which were implied from the court’s ultimate conclusion.⁴ But when there is conflicting testimony, the circuit court is the ultimate

³ The transcript of the hearing refers to “subsection (e),” but that is clearly in error. We know this to be true both because the circuit court quoted the relevant language, which is that of WIS. STAT. § 813.125(1)(am)4.b., and because there is no subdivision paragraph e. in the definition of “harassment” under § 813.125(1)(am)4.

⁴ In his briefing, Roberts refers to WIS. STAT. § 947.013, the statute governing criminal acts of harassment, as being germane to King’s petition, citing *Welytok v. Ziolkowski*, 2008 WI App 67, 312
(continued)

arbiter of the witnesses' credibility. *Bank of Sun Prairie v. Opstein*, 86 Wis. 2d 669, 676, 273 N.W.2d 279 (1979). Such deference is appropriate because the court has the opportunity to observe firsthand the demeanor of the witnesses and gauge the persuasiveness of their testimony. *State v. McCallum*, 208 Wis. 2d 463, 488, 561 N.W.2d 707 (1997) (Abrahamson, C.J., concurring) (“[T]he circuit court is in a much better position than an appellate court to resolve whether the witness is inherently incredible.”). In short, we defer to the circuit court’s credibility determinations, and we affirm a court’s findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2).

In looking at the evidentiary hearing transcript as a whole, it is clear that on many factual matters, King and Roberts had, as the circuit court noted, “completely inconsistent” testimony. As just stated, it was for the court to assess the credibility of the divergent testimony and make findings of fact accordingly. The court simply found King’s version of events more credible than Roberts’ testimony. Of particular note, while Roberts asserts that his conduct did not really cause King to have fear, the court expressly found to the contrary. In addition, the court could reasonably infer that Roberts’ conduct was intended to harass King because King tried avoiding contact with him—which the court found to be true—and Roberts attempted to contact her anyway. Further, the court specifically found, based on King’s testimony, that the conduct at

Wis. 2d 435, 752 N.W.2d 359. In particular, he contends the circuit court must have had reasonable grounds to believe that he violated that statute in order for the civil injunction order to be issued in this case.

The version of WIS. STAT. § 813.125(4)(a)3. that existed at the time *Welytok* was decided stated that to grant an injunction, the circuit court must find “reasonable grounds to believe that the respondent has [violated WIS. STAT. §] 947.013.” *Welytok*, 312 Wis. 2d 435, ¶23 (alteration in original; quoting § 813.125(4)(a)3. (2005-06)). The relevant statutory language in § 813.125 has since been amended, such that the respondent need only have engaged in conduct that meets the definition of harassment within § 813.125 itself. *See* 2005 Wis. Act 272, § 4. The circuit court here applied the correct legal standard, which no longer involves an express incorporation of § 947.013.

issue was over a “period of time; there is a continuous course of conduct.” None of the foregoing findings are clearly erroneous.

To the extent Roberts is arguing that even if the facts as alleged by King are deemed true, those allegations do not meet the legal standard for harassment, we disagree. In this regard, Roberts points to two facts. First, he references King’s admission that one month before he went to her home she had contact with him via one text message. Second, as discussed at the evidentiary hearing, he notes an alleged dispute between the parties regarding tires that King allegedly took from him. He claims that even if any of his conduct is deemed harassing, in the context of this dispute over the tires it served a legitimate purpose of trying to collect money that King owed to him. Finally, Roberts seems to argue that his conduct could not be deemed harassing unless he actually made verbal threats to King.

We disagree in all respects. As an initial matter, harassing behavior meeting the legal standard under WIS. STAT. § 813.125 need not be communicated through words. Conduct alone can be intimidating, including repeated attempts to call or otherwise communicate with another despite that person refusing to answer, as well as physically approaching someone’s home for no reason other than to be in close proximity to the threatened individual.

Furthermore, the fact that King sent one text message to Roberts does not excuse Roberts’ behavior, such that his behavior was not harassing as a matter of law. Rather, as King’s credited testimony established, King’s actions clearly indicated to Roberts that she did not want anything to do with him after their relationship ended a few months prior. Likewise, while Roberts suggests that what occurred here amounts to “a small claims dispute” over the tires, at the time of his conduct at issue, no small claims action had been filed and, according to King,

Roberts had never provided her with the written notice he claimed to have left on her door that night. Regardless, such an underlying dispute did not give Roberts license to engage in conduct that, as found by the circuit court, harassed and intimidated King. And to the extent Roberts contends that his presence at King's home was related solely to his attempt to get King to pay for the tires and not to intimate her, the court apparently discredited that contention as a factual matter.

We have done our best to discern Roberts' arguments in his pro se briefing, and we reject them for the reasons discussed above. In all, the record supports a conclusion that there were reasonable grounds to believe that Roberts engaged in a course of conduct or repeatedly committed acts which harassed or intimidated King and which served no legitimate purpose.

Upon the foregoing,

IT IS ORDERED that the order 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