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DISTRICT IV

February 27, 2025

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

2024AP262

Antonio G. Jackson v. Breanna M. Zank (L.C.#2023GF4)

Before Blanchard, Graham, and Taylor, 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).

Antonio Jackson, pro se, appeals a circuit court order that dismissed Jackson's petition for a harassment temporary restraining order (TRO) and injunction hearing. 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 (2023-24).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

In December 2023, Jackson filed a petition for a TRO and harassment injunction against Breanna Zank, alleging the following. At the time the petition was filed, Jackson was a prison inmate at Jackson Correctional Institution and Zank was a social worker at the prison. In 2022, Zank told Jackson that, as part of his program classification review (PCR), Zank would recommend that Jackson be moved to a minimum security facility. However, at Jackson's 2022 PCR hearing, Jackson learned that Zank had recommended that Jackson remain in medium security. The last-minute change in recommendation caused Jackson stress because he had prepared for the hearing based on Zank's assurance that she would recommend a minimum security classification.

When Jackson's 2023 PCR was approaching, Jackson objected to Zank providing a recommendation to the PCR committee. When Jackson was informed that Zank would be conducting the staff appraisal and recommendation for Jackson's 2023 PCR, Jackson began a hunger strike to protest Zank's involvement. However, Zank remained the social worker who provided the 2023 recommendation for Jackson's PCR. Zank recommended that Jackson remain in medium security custody due to his recent hunger strike.

The circuit court denied Jackson's petition on the basis that Jackson failed to meet his burden of proof for the court to issue a harassment TRO under WIS. STAT. § 813.125.

A person seeking a harassment injunction must first petition for a TRO. *See* WIS. STAT. § 813.125(3) and (4). A petition for a TRO must allege that the respondent "has engaged in harassment with intent to harass or intimidate the petitioner." Sec. 813.125(5)(a)3. "Harassment" is defined as: "Engaging 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)4.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.’” *Welytok v. Ziolkowski*, 2008 WI App 67, ¶25, 312 Wis. 2d 435, 752 N.W.2d 359 (citing WIS. STAT. § 947.013(1)(a)). We have explained that “‘harass’ means ‘to worry and impede by repeated attacks, to vex, trouble or annoy continually or chronically, to plague, bedevil or badger,’ and that ‘intimidate’ means ‘to make timid or fearful.’” *Id.*, ¶35 (citation omitted).

Whether the facts alleged in a TRO petition constitute reasonable grounds upon which to issue a TRO is a question of law that we review de novo. *See Kristi L.M. v. Dennis E.M.*, 2007 WI 85, ¶22, 302 Wis. 2d 185, 734 N.W.2d 375 (appellate courts review de novo whether a set of facts meets the legal standard necessary to issue an injunction). The decision to grant or deny a TRO is left to the circuit court’s discretion. *See School Dist. of Slinger v. Wisconsin Interscholastic Athletic Ass’n*, 210 Wis. 2d 365, 370, 563 N.W.2d 585 (Ct. App. 1997).

Jackson contends that the following factual allegations in his petition were sufficient to meet his burden to show that Zank had engaged in harassment with the intent to harass or intimidate him under WIS. STAT. § 813.125: (1) that Zank told Jackson that she would recommend a minimum security classification for his 2022 PCR, but then recommended a medium security classification; and (2) that Zank retaliated against Jackson for his hunger strike by recommending to the PCR committee in 2023 that, because of his hunger strike, Jackson should remain in medium security.² Jackson contends that Zank’s conduct harassed him because

² Jackson also contends that the circuit court erred by denying his petition for an injunction under WIS. STAT. § 813.40, which applies to injunctions concerning “[p]rison or jail conditions,” that is, “any matter related to the conditions of confinement or to the effects of actions by government officers, employees or agents on the lives of prisoners.” *See* WIS. STAT. § 801.02(7)(a)3. However,
(continued)

it caused him stress and negatively affected his welfare. He argues that Zank intended her conduct to harass him because she knew that there was no Department of Corrections (DOC) rule against hunger strikes, that Jackson had not received a conduct report for his hunger strike, and that the DOC could not properly consider that conduct in deciding his security classification. He argues that Zank intended her recommendation to the PCR committee to punish him for his hunger strike in circumvention of DOC disciplinary procedures. He argues that Zank's conduct served no legitimate purpose because it violated DOC policy, and also violated Jackson's First Amendment right to protest. Jackson also argues that, even if Zank's 2023 recommendation served a legitimate purpose, her conduct may still be enjoined as long as any part of her conduct was intended to harass. *See Board of Regents-UW Sys. v. Decker*, 2014 WI 68, ¶38, 355 Wis. 2d 800, 850 N.W.2d 112 (stating that conduct undertaken with intent both as legitimate protest and to harass could constitute harassment).

We conclude that the facts alleged in the petition are insufficient to support a harassment TRO against Zank because they do not allege conduct that would meet the statutory definition of "harassment." Jackson alleged that Zank recommended that he remain in medium security in 2022 after telling him that she would recommend that he be transferred to minimum security and she then recommended that he remain in medium security in 2023 in an attempt to punish him for his hunger strike. However, according to Jackson's petition, Zank made her recommendations to the PCR committee within the scope of her employment at DOC. Because

§ 801.02(7)(b) provides that: "No prisoner may commence a civil action or special proceeding, including a petition for a common law writ of certiorari, with respect to the prison or jail conditions in the facility in which he or she is or has been incarcerated, imprisoned or detained until the person has exhausted all available administrative remedies that the department of corrections has promulgated by rule" Here, Jackson's petition did not include proof of exhaustion of remedies.

Zank’s recommendations to the PCR committee served a legitimate purpose as part of Zank’s employment, they cannot provide the basis for a harassment TRO. *See Welytok*, 312 Wis. 2d 435, ¶30 (“[A] violation of WIS. STAT. § 813.125 may not rest on conduct that serves a legitimate purpose.”).

It is true, as Jackson contends, that we stated in *Decker* that “if an individual has both a legitimate and an illegitimate purpose, the legitimate purpose [does not] automatically protect[] the individual’s conduct from being enjoined.” *Decker*, 355 Wis. 2d 800, ¶38. This is so, we explained, because “intentionally harassing conduct can *never* serve a legitimate purpose.” *Id.* Thus, Decker’s harassing conduct of causing repeated disturbances on a university campus lacked a legitimate purpose, even though he labelled the conduct “protest.” *Id.*, ¶¶38-39. Here, in contrast, the facts alleged in Jackson’s petition show that Zank’s conduct *did* serve a legitimate purpose, as part of her employment and the PCR process at the prison. Accordingly, the circuit court properly dismissed Jackson’s petition for a TRO and injunction hearing.³

Therefore,

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.

Samuel A. Christensen
Clerk of Court of Appeals

³ As stated above, a petitioner must obtain a TRO before an injunction may be granted. *See* WIS. STAT. § 813.125(4)(a)2. Because the circuit court properly dismissed Jackson’s petition for a TRO, it also properly dismissed his request for an injunction hearing.