

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 15, 2006

Cornelia G. Clark
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. 2005AP2693

Cir. Ct. No. 2005CV526

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

SILVIA REYNOSA,

PETITIONER-RESPONDENT,

V.

MARTHA ROSS,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
RICHARD J. KREUL, Judge. *Affirmed.*

Before Brown, Nettesheim and Anderson, JJ.

¶1 PER CURIAM. Martha Ross appeals from a circuit court order enjoining her under WIS. STAT. § 813.125 (2003-04)¹ from harassing Silvia Reynoso and from having any contact with Reynoso by telephone, mail, in person or by third parties. Reynosa did not file a respondent's brief, and we have decided this appeal without a brief from her. We reject Ross' claim that the order is unconstitutionally overbroad, and we affirm.

¶2 Reynosa filed a petition seeking to enjoin Ross, who resides across the street from Reynosa, from harassing her. After a hearing at which both parties testified, the circuit court granted the petition and entered an order enjoining Ross from having contact with Reynosa for two years. On appeal, Ross argues that the order is unconstitutionally overbroad because it proscribes constitutionally protected conduct, is not specifically tailored to the harassing acts allegedly committed by Ross, and does not enjoin conduct established at the injunction hearing.

¶3 At trial, Reynosa testified that Ross yelled at her and threatened her with police involvement over a noisy muffler on her car, Ross called her landlord and the police to complain about her, Ross appeared at her place of employment and yelled at her and threatened her, Ross called the police to complain about loud music at Reynosa's house, and on two occasions, Ross drove quickly down the street toward Reynosa such that Reynosa, who was carrying her baby on one occasion, felt threatened and unsafe, and Ross made numerous telephone calls to her.

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶4 Ross testified that as the block captain, she has been working with the city to address the poor condition of rental units on the street and has been lauded by city authorities for her work in the neighborhood to address problems with neighborhood landlords. Ross denied harassing Reynosa.

¶5 The circuit court found that Ross did not deny Reynosa's allegations that Ross drove quickly toward her on two occasions and that Ross went to Reynosa's work place to confront her, and that the workplace encounter caused Reynosa to feel ill and leave work early. The court declined to rely upon Reynosa's claims of harassing telephone calls because the testimony was not sufficiently definite in that regard. The court found that Ross' ire at the neighborhood landlords was inappropriately directed at Reynosa. The court enjoined Ross from having any contact with Reynosa for two years.

¶6 The scope of a harassment injunction is within the circuit court's discretion. *W.W.W. v. M.C.S.*, 185 Wis. 2d 468, 495, 518 N.W.2d 285 (Ct. App. 1994). We will affirm the circuit court's findings of fact if they are not clearly erroneous, WIS. STAT. § 805.17(2), and we defer to the circuit court's assessment of the credibility of the witnesses, *Village of Big Bend v. Anderson*, 103 Wis. 2d 403, 410, 308 N.W.2d 887 (Ct. App. 1981).

¶7 Ross argues that the injunction is unconstitutionally overbroad. In *Bachowski v. Salamone*, 139 Wis. 2d 397, 414, 407 N.W.2d 533 (1987), the court held that an injunction that prohibited any contact was too broad because it enjoined contact "which simply would not constitute harassment under the statute" The court held that a harassment injunction may only enjoin acts or conduct or substantially similar conduct proven at trial and which form the basis for the court's findings of harassment. *Id.* In *Bachowski*, the proof of harassment

was limited to evidence that Salamone yelled across the street at Bachowski. *Id.* at 413. This evidence did not support enjoining all contact. *Id.* at 414.

¶8 *Bachowski* does not control this case. Here, the evidence before the circuit court indicated that Ross' harassing contact with Reynosa took many forms: personal contact, threatening use of an auto, and personal contact at Reynosa's workplace. The manner of harassment is the touchstone of our analysis, and an order enjoining all contact is not overbroad if it is based on diverse types of conduct. Constitutionally protected activity may be enjoined if such a limitation is necessary to end the harassing behavior.

[A] circuit court, in an effort to *avoid* harassment of the petitioner, may prohibit the respondent from engaging in otherwise lawful conduct that, in the past, has escalated into or provided an opportunity for actual harassment.

State v. Sveum, 2002 WI App 105, ¶27, 254 Wis. 2d 868, 648 N.W.2d 496 (citation omitted). Because Ross' harassment of Reynosa took several forms, enjoining all contact was within the circuit court's discretion and is supported by the facts of record. The injunction was properly tailored to prohibit further harassment.

By the Court.—Order affirmed.

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

