

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 24, 2002

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. 01-0982
STATE OF WISCONSIN

Cir. Ct. No. 01-CV-14

**IN COURT OF APPEALS
DISTRICT IV**

PATRICIA J. TABBUTT,

PETITIONER-RESPONDENT,

V.

ROBERT GOREE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Adams County:
DUANE H. POLIVKA, Judge. *Reversed and cause remanded with directions.*

Before Vergeront, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Robert Goree appeals an order enjoining him from having any contact with Patricia Tabbutt. He claims that: (1) the evidence was insufficient to show that he had been harassing Tabbutt; (2) the trial court violated his due process rights by denying him the right to present witnesses on his behalf; and (3) the terms of the injunction were overly broad. We reverse and remand for

additional proceedings because we agree that Goree should have been allowed to present his witnesses. In light of our decision, we do not reach the other issues raised.

¶2 Tabbutt filed a petition for a harassment injunction against Goree, alleging that Goree had been making repetitive phone calls to her, had entered her property without permission on several occasions while drunk, had sat in his car in her driveway late at night on other occasions, and had tried to get her fired by spreading rumors about her, all of which had caused her to lose sleep and time from work. She testified that the calls were sometimes as frequent as three times a day and that Goree had no reason to call. She also testified that Goree had followed her one day as she was driving her school bus. Tabbutt called another woman to testify, who said that Goree had told her that Tabbutt was a lesbian and that she had been attacking little girls on the school bus. The woman also testified that Goree had asked her to sign a petition to get Tabbutt fired.

¶3 Goree testified that he had never called Tabbutt a lesbian or tried to get her fired. He denied ever having come onto her property uninvited, except for a time when Tabbutt's landlord had asked him to do some repair work. Goree also claimed that Tabbutt had called him and his wife several times and that he had asked her to leave his house once, but he did not specifically deny that he had been repetitively calling Tabbutt against her wishes.

¶4 After leaving the stand, Goree announced that he had several other witnesses. The trial court responded by informing Goree that Goree would only have five minutes and could only call one or two witnesses. Goree called his daughter to confirm that he had asked Tabbutt to leave his house on one occasion,

and called his wife to testify regarding a separate injunction petition which was being heard jointly with the petition in this case.¹

¶5 The court again told Goree that there was not time for him to call additional witnesses, although it then allowed the other petitioner to call a rebuttal witness. When the testimony was finished, Goree attempted to bring to the trial court's attention *Bachowski v. Salamone*, 139 Wis. 2d 397, 407 N.W.2d 533 (1987), a case dealing with the permissible scope of a harassment injunction. The trial court cut Goree off, claiming the case was not relevant, apparently under the mistaken belief that the case involved a prior matter between the parties in this case. The following exchange then took place:

[THE COURT:] ... I realize respondent has approximately what do you have here, six more witnesses?

MR. GOREE: Yes, five, six.

THE COURT: And the Court, we've been hearing this for nearly 45 minutes. We're going to proceed at this time and deal with the matter. The Court does not have the time to engage in this. Are you sure they'd bring up something different here, these witnesses?

MR. GOREE: Well, she said I came on her property. I did not go on her property alone. They can testify that I did, and I was over at another person's house when —

THE COURT: All right. I'm going to proceed.

The trial court then noted that the case involved "one person's word basically against another," and proceeded to find that Goree had gone over to Tabbutt's house when he knew he was not welcome and had made harassing phone calls.

¹ The other petition was dismissed by the trial court for insufficient evidence and is not a subject of this appeal.

¶6 The due process clauses of the United States and Wisconsin Constitutions guarantee a person with a liberty interest at stake the right to be heard. U.S. CONST. amend. XIV; WIS. CONST. art. I, § 1. See *State v. Achterberg*, 201 Wis. 2d 291, 300, 548 N.W.2d 515 (1996). The concept of fair play inherent in due process includes “the right to meet ... charges or claims with competent evidence.” *Wright v. LIRC*, 210 Wis. 2d 289, 296, 565 N.W.2d 221 (Ct. App. 1997).

¶7 The right to present evidence is not without limitation: the trial court may control the use of its courtroom and judicial resources by excluding otherwise relevant evidence which would cause “undue delay, waste of time, or needless presentation of cumulative evidence.” WIS. STAT. § 904.03 (1999-2000).² Here, the record does not show that the trial court made an effort to evaluate the probative value of the proffered testimony and it cut off Goree’s attempted offer of proof. It appears the trial court’s decision to exclude Goree’s witnesses was made solely on the basis of time constraints.

¶8 It may be that the trial court instinctively knew that additional witnesses would not change the result in this case. The court may have been right. But what the record on appeal shows is that the court prevented Goree from calling additional witnesses, stopped an offer of proof in which Goree began to explain how additional witnesses would support his testimony, and then ruled in favor of Tabbutt, noting that the case involved “one person’s word basically against another.” While we are sympathetic to the volume of cases before trial

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

courts, the record before us does not reveal a reasonable basis to cut off Goree's presentation of evidence.

¶9 Accordingly, we remand with directions that the trial court vacate the order and reopen the evidence to allow Goree to make a further offer of proof or present additional witnesses as may be appropriate.

By the Court.—Order reversed and cause remanded with directions.

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

