

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 14, 2010

A. John Voelker
Acting 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. 2009AP1361

Cir. Ct. No. 2009CV1551

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

LAURA A. WIERZBICKI,

PETITIONER-RESPONDENT,

V.

GREG D. GRISWOLD,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Affirmed.*

Before Vergeront, P.J., Lundsten and Fitzpatrick,¹ JJ.

¹ Rock County Circuit Court Judge Michael R. Fitzpatrick is sitting by special assignment pursuant to the Judicial Exchange Program.

¶1 PER CURIAM. Greg Griswold appeals from a harassment injunction. We affirm.

¶2 The injunction was sought by Laura Wierzbicki. The circuit court held a hearing, after which it granted a four-year injunction that bars Griswold from harassing or contacting her and requires him to avoid her residence.

¶3 Griswold argues that the court deprived him of due process by limiting his presentation at the hearing to what he describes as thirty-five minutes, which resulted in him not receiving an opportunity to be heard for a meaningful time and in a meaningful manner.

¶4 We first note that the case cited by Griswold states that litigants should be heard “at” a meaningful time, not “accorded reasonable time,” as he argues. See *Piper v. Popp*, 167 Wis. 2d 633, 644, 482 N.W.2d 353 (1992). Beyond that, we conclude that Griswold was given an opportunity to be heard in a meaningful manner. Griswold cross-examined Wierzbicki at the hearing. This cross-examination takes up twenty-eight pages of the transcript. A considerable portion of that time was consumed by questions that were not relevant and were ruled as such by the circuit court. Even with that time not well spent, however, Griswold was able to cross-examine Wierzbicki about the factual allegations underlying her petition. Griswold himself testified without interruption. His testimony takes up seven pages of the transcript. After that, the court asked him further questions. Given the relatively limited subject material of this matter, this was an adequate opportunity to be heard.

¶5 Griswold next argues that Wierzbicki did not meet her burden of proof to obtain the injunction. But he does not develop a “burden of proof” or sufficiency of the evidence argument. Instead, his supporting argument is directed

at the court's credibility findings. He argues that the court erred by relying on his lack of emotion at the hearing as an indicator of his credibility, and that Wierzbicki was not credible for various reasons. We affirm the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). When the circuit court acts as the finder of fact, and where there is conflicting testimony, that court is the ultimate arbiter of the credibility of the witnesses. *Bank of Sun Prairie v. Opstein*, 86 Wis. 2d 669, 676, 273 N.W.2d 279 (1979).

¶6 Griswold has not convinced us that the circuit court erred by finding that certain events occurred as testified to by Wierzbicki. The court found that Griswold disconnected telephone calls, and threatened to cut off power and propane to the house, to disable their truck, and to destroy in some way the phone line to the house. The court further found that these acts intimidated Wierzbicki and served no legitimate purpose. See WIS. STAT. § 813.125(1)(b). Even if Griswold had presented a developed sufficiency of the evidence argument, we would reject it. Without attempting to detail the evidence here, we are satisfied that the parties' testimony provides sufficient support for these findings.

¶7 Griswold argues about the scope of the injunction. The scope of an injunction is within the sound discretion of the trial court, and we will not overturn a discretionary determination that is based on the facts of record and the applicable law. *Welytok v. Ziolkowski*, 2008 WI App 67, ¶24, 312 Wis. 2d 435, 752 N.W.2d 359.

¶8 Griswold argues that the court erroneously exercised its discretion by giving the injunction a four-year term. However, he has not offered any specific reason why that term is too long, and we do not see any basis to conclude that it is unreasonable. Griswold also argues that the court erred by not limiting

the injunction so as to forbid only those acts of harassment that he was found to have committed, rather than making it a no-contact injunction that bars him from the property where the parties lived. However, we are satisfied that the nature of the acts Griswold was found to have committed made it reasonable to issue an injunction of this scope.

¶9 Griswold next argues that the circuit court erred by barring him from making an audio recording of the hearing. The argument is not well developed, and Griswold cites no legal authority explaining what relief we might grant on this issue. We see no basis on which such an error could result in reversal of the harassment injunction, which is the relief Griswold seeks in this appeal. In the case Griswold cites, the party who wanted to do the recording filed a declaratory judgment action separate from the proceeding in which the party had wanted to do the recording. *Forsythe v. Family Ct. Comm’r*, 131 Wis. 2d 322, 325, 388 N.W.2d 580 (1986).

¶10 Finally, Wierzbicki moves for sanctions on the ground that this appeal was frivolous under WIS. STAT. RULE 809.25(3). While obviously Griswold has not prevailed, we are not persuaded that every issue in the appeal was frivolous. See *Baumeister v. Automated Prods., Inc.*, 2004 WI 148, ¶34, 277 Wis. 2d 21, 620 N.W.2d 1 (every issue must be frivolous to award fees). Nor has Wierzbicki provided any factual basis from which it could be concluded that the appeal was in bad faith, solely for purposes of harassing or maliciously injuring another. Therefore, we deny the motion for sanctions.

By the Court.—Order affirmed.

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

