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DISTRICT IV

February 11, 2015

To:

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Circuit Court Judge
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Richland County Sheriff's Department

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

2013AP2731

Richland County Sheriff's Department v. Joshua A. Lisney
(L.C. # 2013CV107)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Joshua Lisney appeals an order granting a harassment injunction against him and in favor of past and current members of the Richland County Sheriff's Department. 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 (2013-14).¹ We summarily reverse.

The Richland County Sheriff's Department filed a petition for a temporary restraining order against Lisney on September 4, 2013. After an evidentiary hearing, the circuit court issued a four-year injunction prohibiting Lisney from harassing or having any contact with three current

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

members of the department and one former deputy. On appeal, Lisney argues that the County failed to prove that he engaged in a course of conduct constituting harassment under WIS. STAT. § 813.125. We agree.

Wisconsin's restraining order statute defines harassment as several different types of behavior, including "[e]ngaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose." WIS. STAT. § 813.125(1)(b). The petition filed by the department in circuit court alleged that Lisney "has engaged in a pattern of behavior that can be described as threatening with the intent to intimidate and harass deputies of the Richland Co. Sheriff's Department who he feels are responsible for his father's death."

On appeal, Lisney argues that, although the petition described five incidents in which Lisney allegedly harassed law enforcement, the department failed to produce evidence of harassment as to all but one of those incidents. Lisney asserts that the only incident for which the department arguably produced evidence of harassment was Lisney's interaction on September 29, 2012 with Deputy Jenny Frey.

Frey testified that she responded to a call from Lisney's live-in girlfriend, who was concerned about Lisney's mental state. The girlfriend told Frey that Lisney had been making threats against his brothers and against another police officer, Sergeant Dane Kanable. Frey described Lisney as being "agitated" when she made contact with him. Lisney expressed that he was upset with Kanable. After Frey took Lisney to the hospital for emergency detention, Lisney told her that he wanted her to bring Kanable and another officer into the exam room because he wanted to fight them. Frey testified that she believed Lisney's statement was meant to be taken

as harassment with respect to those officers. She did not believe Lisney was attempting to threaten or intimidate her personally.

Lisney argues that, even if the incident on September 29, 2012, is viewed as a threat to law enforcement, a single incident is insufficient to establish repeated acts or a course of conduct, as required to prove harassment under WIS. STAT. § 813.125. Richland County, in its respondent's brief on behalf of the department, makes no attempt to refute this assertion.² The County points to evidence in the record of troubling behavior by Lisney on other occasions, such as refusing to comply with officers' orders and grabbing the end of an officer's gun. But the County fails to explain why any of these occasions constitute harassment within the meaning of the statute. Behavior that is merely "immature, immoderate, rude, or patronizing," does not rise to the level of harassment acts. *Bachowski v. Salamone*, 139 Wis. 2d 397, 407, 407 N.W.2d 533 (1987) (quoted source omitted). The County also points to the fact that Joshua's father had been shot and killed by Kanable, providing Lisney with motivation to express hostility toward the Richland County Police Department. However, motivation to express hostility toward law enforcement is not, without more, evidence of acts constituting harassment.

The definition of harassment requires that the harassing acts "must be accomplished by repeated acts or a course of conduct." *Id.* at 408; *see also* WIS. STAT. § 813.125(1)(b). A single, isolated act does not constitute harassment. *Bachowski*, 139 Wis. 2d at 408. The County's brief fails to direct us to evidence of actual "acts which harass or intimidate another person" other than

² We note that the County did not file its brief until after we ordered it to do so pursuant to *Raz v. Brown*, 2003 WI 29, ¶36, 260 Wis. 2d 614, 660 N.W.2d 647.

the threats Lisney allegedly made to Frey about other officers on September 29, 2012. *See* § 813.125(1)(b). Therefore, the order granting an injunction must be reversed.

Lisney argues two additional grounds for reversal. However, we need not address those grounds because we reverse on the basis that the department failed to prove a course of conduct constituting harassment. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (we need not address all issues when deciding case on other grounds).

IT IS ORDERED that the order is summarily reversed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals