OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

November 10, 2016

To:

Hon. Robert J. Shannon
Circuit Court Judge
Portage County Courthouse
1516 Church St
Stevens Point, WI 54481

Patricia Baker
Clerk of Circuit Court
Portage County Courthouse
1516 Church Street
Stevens Point, WI 54481-3598

Brianna Lynn Sweeney
Asst. Corporation Counsel
1516 Church Street
Stevens Point, WI 54481-3501

Daniel P. Worzalla

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

2015AP2436 Sheila M. Check-Moe v. Daniel P. Worzalla (L.C. # 2015CV180)

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

Daniel Worzalla, pro se, appeals a harassment injunction order granted to Sheila Check-Moe. Worzalla contends that the circuit court lacked a factual or legal basis to issue the injunction. 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 affirm.

In 2011, Check-Moe obtained a harassment injunction order against Worzalla after Worzalla gathered personal information about Check-Moe and her family and distributed it to

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

Check-Moe's co-workers. That injunction was set to expire in July 2015. On June 29, 2015, Check-Moe initiated this action by petitioning for another four-year harassment injunction against Worzalla. Check-Moe asserted that Worzalla had used his family members to obtain documents about Check-Moe and continued to violate the current restraining order, as well as a court order in a related criminal case, causing Check-Moe emotional distress.

The circuit court commissioner issued the injunction on July 13, 2015. On July 27, 2015, Worzalla demanded a hearing de novo in the circuit court. The circuit court held a hearing de novo on October 30, 2015, and granted the injunction.

A circuit court may grant a harassment injunction if the court finds "reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner." WIS. STAT. § 813.125(4)(a)3. "Harassment" includes "[e]ngaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose." Section 813.125(1)(b).

Worzalla contends that the evidence at the de novo hearing did not support the injunction.[2] Worzalla asserts that there was no evidence tying Worzalla to any of the actions taken by Worzalla's family members. However, while it is true that there was no direct evidence that Worzalla's family had acted at Worzalla's request, it was reasonable for the circuit court to draw that inference. *See* ***Welytok v. Ziolkowski***, 2008 WI App 67, ¶27, 312 Wis. 2d 435, 752

[2] Worzalla asserts, in passing, that the de novo hearing was not held within thirty days of his motion requesting the hearing. *See* WIS. STAT. § 813.126. However, Worzalla does not develop any argument that he is entitled to relief based on the claimed error. We decline to develop such an argument on Worzalla's behalf. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (declining to address issues "so lacking in organization and substance that for us to decide [them], we would first have to develop them").

N.W.2d 359 (on review, "we accept the reasonable inference drawn by the circuit court sitting as fact finder") (citation omitted). Check-Moe presented evidence that Worzalla's son filed a complaint against Check-Moe with the Department of Regulation and Licensing that included the documents that Worzalla had been ordered to surrender under the previous restraining order, and that Worzalla's mother filed a public records request for information related to Check-Moe's employment history.[3] One reasonable inference from that evidence was that Worzalla had attempted to circumvent the prior restraining order by having his family members conduct the prohibited actions on his behalf. Notably, Worzalla did not present any evidence that he was not involved in the actions of his family.[4] Accordingly, we have no basis to disturb the circuit court's finding that Worzalla had "continued this pattern not directly, but through … a surrogate … to do what he knew he couldn't directly do."

Worzalla also asserts that the evidence showed only isolated incidents by his family members, rather than a "course of conduct" as required under WIS. STAT. § 813.125(1)(b). He argues that the two specific incidents—Worzalla's son filing a complaint with the Department of Regulation and Licensing, and his mother filing a public records request—did not "harass" or "intimidate" Check-Moe. In support, Worzalla relies on Check-Moe failing to testify

[3] Additionally, Worzalla stated in his motion for a de novo hearing that the public records request was intended to require production of material to be used in an attempt to obtain postconviction relief in Worzalla's criminal case.

[4] Worzalla asserts that he was unable to present witnesses because he did not receive sufficient notice that the de novo hearing had been rescheduled from October 29 to October 30, 2015. However, Worzalla did not raise that objection at the hearing and did not seek additional time to allow him to present witnesses. He therefore forfeited that argument for appeal. *See* ***State v. Schulpius***, 2006 WI 1, ¶26, 287 Wis. 2d 44, 707 N.W.2d 495 (we generally do not review an issue raised for the first time on appeal). Additionally, to the extent Worzalla advances arguments by citing evidence in his appendix that was not introduced in the circuit court, we do not consider those arguments. "An appellate court's review is confined to those parts of the record made available to it." *See* ***Pettit***, 171 Wis. 2d at 646.

specifically that she felt "harassed" or "intimidated," and failing to immediately seek the restraining order when those incidents occurred.

We conclude that the facts of this case, as found by the circuit court, met the statutory definition of harassment. *See* ***Welytok***, 312 Wis. 2d 435, ¶¶33-38, The circuit court found, based on the evidence at the de novo hearing, that Worzalla was continuing his pattern of prohibited conduct as to Check-Moe. That finding was supported by Check-Moe's testimony that Worzalla was prohibited by court order from contacting Check-Moe and had been ordered to surrender the documents Worzalla had gathered containing personal information about Check-Moe; that Worzalla's family members had filed a complaint containing the documents Worzalla had been ordered to surrender and had sought additional information as to Check-Moe; that Worzalla's conduct has been "extremely upsetting" to Check-Moe; and that Check-Moe sought the restraining order at the time the previous restraining order was set to expire. Accordingly, the evidence was sufficient to show that Worzalla had engaged in harassment with intent to harass Check-Moe. *See* ***id.***, ¶35 ("'[H]arass' means 'to worry and impede by repeated attacks, to vex, trouble or annoy continually or chronically, to plague, bedevil or badger,' and 'intimidate' means 'to make timid or fearful.'" (citation omitted)).

Worzalla also contends that his son was lawfully entitled to file a complaint against Check-Moe and that his mother was legally entitled to seek public records. He asserts that, because the actions were lawful, they served a "legitimate purpose." However, the supreme court has explained that "conduct or repetitive acts that are intended to harass or intimidate do not serve a legitimate purpose." ***Board of Regents–UW System v. Decker***, 2014 WI 68, ¶38, 355 Wis. 2d 800, 850 N.W.2d 112 (quoted source omitted). Thus, Worzalla "cannot shield his harassing conduct from regulation by labeling it" as serving a legitimate purpose. ***Id.*** Rather,

"[i]f [Worzalla's] purpose was even in part to harass [Check-Moe], his conduct may be enjoined under WIS. STAT. § 813.125." ***Id.*** As explained above, the circuit court found that Worzalla continued his pattern of harassing Check-Moe by enlisting his family members to act on his behalf, and we have no basis to disturb that finding. Accordingly, the actions, though legal, supported the injunction.

Finally, Worzalla argues that the circuit court was required to make a specific factual finding as to whether the actions by Worzalla's family served a legitimate purpose. *See* ***Welytok***, 312 Wis. 2d 435, ¶30 (whether conduct serves a legitimate purpose is left to the fact finder). Worzalla argues that the injunction was improperly granted because the circuit court did not make that finding on the record. However, in the absence of a specific factual finding, we will search for reasons to sustain the circuit court's exercise of discretion in granting a harassment injunction. *See* ***id.***, ¶24. Here, the circuit court specifically found that the conduct was part of Worzalla's continuing pattern of behavior, and that Worzalla was now acting through his family to accomplish acts that he knew he was prohibited from doing. We are satisfied that the conduct did not serve a legitimate purpose. *See* ***Board of Regents***, 355 Wis. 2d 800, ¶38 (conduct that is even partially intended as harassment does not serve a legitimate purpose).

We conclude that the court relied on the facts in the record in reaching its factual findings, which established reasonable grounds to believe Worzalla had harassed Check-Moe with the intent to harass her. Accordingly, the circuit court properly exercised its discretion by granting the injunction. *See* ***Welytok***, 312 Wis. 2d 435, ¶¶23–24.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals