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DISTRICT II

March 27, 2019

To:

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

2018AP418	Gerald W. Babe v. Tim A. York (L.C. #2017CV765)
2018AP419	Jeffrey S. Zuercher v. Tim A. York (L.C. #2017CV766)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

In these consolidated appeals, Tim A. York appeals from circuit court orders granting a four-year harassment injunction against him as a result of his conduct toward his neighbors, Gerald W. Babe and Jeffrey S. Zuercher. Based upon our review of the briefs and the records, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18). We affirm.

We review a circuit court’s decision to grant and establish the scope of a WIS. STAT. § 813.125 (2015-16)¹ harassment injunction for an erroneous exercise of discretion. **Board of Regents-UW Sys. v. Decker**, 2014 WI 68, ¶19, 355 Wis. 2d 800, 850 N.W.2d 112. Before granting an injunction under § 813.125, the circuit court must find “reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner.” **Board of Regents**, 355 Wis. 2d 800, ¶20 (citing § 813.125(4)(a)3.). We will affirm the circuit court’s factual findings unless they are clearly erroneous. **Board of Regents**, 355 Wis. 2d 800, ¶20. Whether reasonable grounds exist to grant the injunction presents a question of law that we review de novo. *Id.*

The dispute among the parties arises from the use of a private gravel road. For purposes of ingress and egress from the main public road,² York’s property enjoys an easement over a sixty-six-foot wide, 800-foot long private gravel road also used by Zuercher and Babe to access their properties. Contending that York’s conduct in connection with his use of the private road constituted harassment, Babe and Zuercher petitioned for an injunction against York.

On de novo review of the court commissioner’s decision granting a harassment injunction against York, the circuit court made the following findings of fact. The court described York’s behavior toward his neighbors as “needling ...[the] neighbors” with whom he does not get along. The court noted that York’s rights under the easement were limited to driving in and out of his property, did not include the right to use Babe’s or Zuercher’s property as a turn-around area for

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The scope of the easement was addressed and determined in prior litigation between the parties. The scope of the easement is not at issue in this appeal.

his vehicles, and did not give him the right to plow or otherwise maintain or interfere with the property of his neighbors. The evidence before the circuit court included that York plowed his driveway by pushing piles of snow onto neighboring properties, plowed on the side of the roadway on the neighbors' property, which ripped up the neighbors' grass and left tracks on their property, moved snow piles ten feet off the road onto Babe's property when such activity was neither necessary nor done for a legitimate purpose, pushed or plowed debris to the fence line between his and Babe's properties causing a need for repairs and spring clean up of debris, plowed when there was no snow to remove leaving piles of driveway debris on the sides of the road, drove his lawn mower across the neighbors' yards to reach his mailbox rather than keeping to the private road over which he enjoys an easement, and committed an act of intimidation when he unnecessarily moved driveway stones. Finally, the court deemed "kind of appalling" video evidence that York pointed a powerful, running leaf blower toward Zuercher while Zuercher was operating equipment, causing dust and stones to fly at him and his equipment.

Based on the foregoing, the court enjoined York's conduct and imposed a requirement that the parties remain seventy-five feet away from each other. Under the terms of the injunction, York may use only the private gravel road to access his property and he must keep his vehicles off of his neighbors' properties.

On appeal, York does not challenge the circuit court's findings of fact as clearly erroneous. Rather, he argues that there was no evidence that he had the requisite intent to harass or intimidate and therefore his conduct did not constitute harassment under WIS. STAT. § 813.125. York also seems to argue that because he pointed a leaf blower at Zuercher on only one occasion, the incident did not constitute a course of conduct or a repeated act.

Harassment is defined as “[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)(am)2. “[C]onduct or repetitive acts that are intended to harass or intimidate do not serve a legitimate purpose.” *Bachowski v. Salamone*, 139 Wis. 2d 397, 408, 407 N.W.2d 533 (1987). Intent to harass “must be inferred from the acts and statements of the person, in view of the surrounding circumstances.” *Welytok v. Ziolkowski*, 2008 WI App 67, ¶26, 312 Wis. 2d 435, 752 N.W.2d 359 (citation omitted).

The weight and credibility of the evidence was for the circuit court to determine. *See State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. The court correctly considered the totality of York’s conduct toward his neighbors and drew appropriate inferences about his intent from that conduct. *See Welytok*, 312 Wis. 2d 435, ¶26. The record shows that the circuit court considered the leaf blower incident as part of an ongoing course of conduct. The court’s findings, which are not clearly erroneous, suffice to show a course of conduct or repeated acts by York intended to harass or intimidate his neighbors and served no legitimate purpose. *See Bachowski*, 139 Wis. 2d at 408. The circuit court had reasonable grounds to grant an injunction against York and properly exercised its discretion in enjoining York from harassing his neighbors. *See Board of Regents*, 355 Wis. 2d 800, ¶¶19-20.

York suggests that instead of seeking a WIS. STAT. § 813.125 harassment injunction, Babe and Zuercher should have resorted to other remedies to determine the parties’ property rights. York’s appellate briefs do not substantiate that he made this argument to the circuit court, and we will not search the record to determine whether he did. *See Wisconsin Power & Light Co. v. Public Serv. Comm’n*, 171 Wis. 2d 553, 572, 492 N.W.2d 159 (Ct. App. 1992), *aff’d*, 181

Wis. 2d 385, 511 N.W.2d 291 (1994); *Segall v. Hurwitz*, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983) (we do not address an issue raised for the first time on appeal).

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2017-18).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals