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June 26, 2019

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

2018AP1760 Petitioner v. Jason Boehlke (L.C. #2018CV251)

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).

Jason Boehlke appeals from an order enjoining him from harassing or contacting the Petitioner. 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 (2017-18).[1] Because reasonable grounds existed to support the circuit court's order, the court did not erroneously exercise its discretion when it issued the injunction. We affirm.

[1] All references to the Wisconsin Statutes are to the 2017-18 version.

For about eighteen months, Boehlke was Petitioner's live-in boyfriend. The relationship turned intermittent around October 31, 2017, completely ending on February 25, 2018. At that time, Boehlke was demanding money from Petitioner claiming he made contributions toward the house. When Boehlke attempted to retrieve his possessions from the house, he claimed that she locked him out, requiring him to call the sheriff's department. Petitioner explained she exclusively owned the residence, Boehlke had his own separate residence, and she felt threatened because Boehlke had allegedly asked for money. Consequently, the deputies assisted Petitioner with having Boehlke removed from the residence.

Boehlke continued to contact Petitioner via text messages, sending approximately thirty between February and May 2018. Some texts asked Petitioner to go on a date or out to eat. Petitioner responded to these texts with "simple messages" denying Boehlke's requests. On May 22, apparently because the text brought up the subject of money, Petitioner instructed Boehlke "to stop texting and harassing me." Boehlke replied, ending by stating, "I expect a response by the end of today or you'll force my hand in a direction I'd rather not go." Petitioner then blocked Boehlke's phone number on her phone. Boehlke responded, "Since you blocked my phone, I'm now going to email you and harass you." Boehlke then sent the same e-mail message six times to Petitioner's e-mail accounts.

On June 16, Boehlke contacted the Petitioner's brother-in-law to ask him to send a message to the Petitioner. On June 17, Boehlke contacted the Petitioner's neighbor, indicating that the neighbor needed to contact Petitioner on behalf of Boehlke, or else Boehlke would involve the neighbor in civil litigation. On July 10, Boehlke appeared at Petitioner's sons' T-ball game, uninvited, and Boehlke spoke to Petitioner's ex-husband.

On July 23, 2018, Petitioner filed the petition for a harassment injunction against Boehlke. A court commissioner issued a temporary restraining order ex parte until the hearing. Petitioner, pro se, and Boehlke, represented by counsel, appeared at the hearing on August 1, 2018, and each testified.

The circuit court determined Petitioner had met her burden of proof, granted the petition, and ordered a harassment injunction against Boehlke. Boehlke appeals.

Governed by WIS. STAT. § 813.125, courts have the power to issue harassment restraining orders and injunctions when the statutory criteria are met. We review a circuit court's decision to grant and establish the scope of a § 813.125 harassment injunction for an erroneous exercise of discretion. *See* ***Board of Regents-UW System 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." ***Decker***, 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. ***Decker***, 355 Wis. 2d 800, ¶20. Whether reasonable grounds exist to grant the injunction presents a question of law that we review de novo. ***Id.***

Boehlke generally argues that there was insufficient evidence to conclude he committed harassment which warranted an injunction. He particularly asserts that the circuit court did not consider and make a record establishing his "intent" to harass or intimidate, nor make any findings as to what constituted harassment. We disagree.

It is clear that there were reasonable grounds for the circuit court to find that Boehlke intended to and did harass the Petitioner. 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). After their relationship ended, and the deputies helped remove Boehlke from Petitioner's home, Boehlke's conduct ramped up from meddlesome to threatening and inappropriately aggressive.

It started with more than an occasional text message, escalating to messages encouraging a new relationship, and eventually to messages demanding money. Although her view toward the initial messages is unclear, it became clear at the point of financial demands that Petitioner no longer wanted to personally deal with Boehlke. Petitioner blocked his number, a sure sign that someone is feeling harassed or intimidated. Blocked from texting and unable to respond appropriately, Boehlke sent multiple emails with thinly veiled threats and the stated purpose of "harassing you." Electronic means having no effect, Boehlke turned to direct personal communications, first contacting Petitioner's brother-in-law and then a neighbor (which included a threat of a lawsuit), all with the urgent message that Petitioner needed to contact Boehlke. Finally, and clearly uninvited, Boehlke chose to attend the T-ball game of the Petitioner's young sons, an event which undoubtedly included other family and friends. Indeed, Bohelke spoke with Petioner's ex-husband, another inappropriate, harassing gesture. These facts provided reasonable grounds to find intent and harassment.

Boehlke points out that, in addition to showing harassing conduct, it must also be shown that his conduct served no legitimate purpose. WIS. STAT. § 813.125(1)(am)2. He argues that

every communication that occurred after Petitioner had asked him to stop were attempts to discuss and resolve the debt he claims she owes him.

We are unpersuaded. When conduct or repetitive acts are intended to harass, by definition that conduct does not serve a legitimate purpose. ***Decker***, 355 Wis. 2d 800, ¶38 (citing ***Bachowski***, 139 Wis. 2d at 408). Putting aside the paradoxical conduct of Boehlke as he allegedly tried to rekindle a romantic relationship via texts with Petitioner while arguing with her about money, it is the totality of the manner in which Bohelke conducted himself that revealed no legitimate purpose. The circuit court correctly considered the totality of Boehlke's behavior and drew appropriate inferences about his intent. *See* ***Welytok***, 312 Wis. 2d 435, ¶26. Boehlke sent almost thirty texts, most of which had nothing to do with money or "legitimate" interests. Indeed, according to Boehlke, none of his text messages *other than* his final text message had anything to do with Boehlke's claim for money. "Nothing was money until the last text, and then [Petitioner] told me to stop talking to [her.]"

Boehlke contends that because he then focused on discussing the alleged debt with Petitioner, this was a legitimate purpose and not harassment. We reject the notion. Boehlke already made his harassing intentions clear. He clearly had a legal avenue to the extent that he had a legitimate purpose, which he made no attempt to establish at the hearing. In any event, the courts have held that by adding an allegedly legitimate issue to the harassing conduct, the conduct remains harassment. *See* ***Decker***, 355 Wis. 2d 800, ¶38. The ***Decker*** court flatly rejected this type of argument: ***Decker*** holds that a person engaging in clearly harassing conduct is still guilty of harassment even though he or she may also be doing the activity, or think they are doing it, for legitimate reasons. *See* ***id.***

In sum, although the circuit court's findings were not lengthy or detailed, the weight and credibility of the evidence was for the court to determine, *see* ***State v. Peppertree Resort Villas, Inc.***, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345, and its findings covered the facts of what Boehlke did and put them into the context of the terminated relationship and the fact that Boehlke persisted in attempting to contact Petitioner, by increasingly aggressive and inappropriate means, after being told to cease. The circuit court specifically stated that Boehlke's actions did not have a legitimate purpose and, by concluding that the Petitioner had met the burden of proof, the court found that Boehlke's overall course of conduct constituted harassment. *See* ***Town of Avon v. Oliver***, 2002 WI App 97, ¶23, 253 Wis. 2d 647, 644 N.W.2d 260 (although no specific findings were made, we can assume the circuit court implicitly made those findings necessary to support its decision, which are ones we can accept if supported by the record, and they are).

Boehlke's final argument is that the order is overbroad. Boehlke's harassing conduct largely consisted of texts, e-mails, and speaking to a couple people Petitioner knew. The injunction, however, requires Boehlke to avoid Petitioner's residence, and he "is not to be within 1000 feet of" her.[2] He notes that "only the acts or conduct which are proven at trial and form the basis of the judge's finding of harassment or substantially similar conduct should be enjoined." ***Bachowski***, 139 Wis. 2d at 414 (courts may only preclude the specific conduct proven at trial to be harassing; scope of an injunction is limited by law, and the injunction must be specific to the acts and conduct that are enjoined).

[2] The injunction is effective for four years. *See* WIS. STAT. § 813.125(4)(c) (not to exceed four years).

Boehlke's arguments summon the constitutional principles of freedom of movement and travel, to include the principle that "transitory movement within a community is a constitutionally guaranteed right—the right of freedom of movement." *See* ***Brandmiller v. Arreola***, 189 Wis. 2d 215, 225, 525 N.W.2d 353 (Ct. App. 1994) (citations omitted).

We disagree. We first note that Boehlke never objected to the court's oral pronouncement of the 1000-foot restriction in court on August 1, 2018, nor did he object or move to reduce or eliminate the restriction once the order was filed. If Boehlke believed that this restriction was so severe, unfounded, and perhaps even unconstitutional, he could have immediately challenged it in front of the court that issued it. When a party fails to raise an error, the circuit courts are robbed of the opportunity to consider, address, and perhaps correct or modify the error or resulting order, and we therefore generally do not address arguments raised for the first time on appeal. *See* ***Commerce Bluff One Condo. Ass'n v. Dixon***, 2011 WI App 46, ¶2 n.2, 332 Wis. 2d 357, 798 N.W.2d 264.

Putting aside waiver, Boehlke is incorrect when he characterizes the court's 1000-foot restriction as unrelated to his harassment of Petitioner. As noted, he went beyond text messages and e-mails. He contacted the Petitioner's brother-in-law as well as a neighbor. Significantly, he went to an event he had no business being at and which could only present an inappropriate situation when he attended the T-ball game of Petitioner's young sons. That episode prompted the Petitioner to seek this injunction. Contrary to Boehlke's portrayal of his conduct, after being removed from her house and told to stop texting, he made threatening comments, and then began to reach out through e-mail and in-person communications with neighbors and family, all increasingly aggressive, inappropriate and personal.

Moreover, in attempting to assert an overbreadth argument, Boehlke makes a similar overreaching mistake. The 1000-foot ban is not significant for two people who do not live in the same city or have children together. The last-known addresses available in the court file have the parties living in cities approximately twenty-seven miles apart. Finally, it is fair to say that the intent of the 1000-foot ban is to make it clear to Boehlke that he is simply to stay away from the Petitioner.

Based on the foregoing, the circuit court had reasonable grounds to grant an injunction against Boehlke and properly exercised its discretion in enjoining him from harassing Petitioner.

Upon the foregoing reasons,

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

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

Sheila T. Reiff
Clerk of Court of Appeals