

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 6, 2010

David R. Schanker
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 Nos. 2008AP2659
2008AP2660
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2008FA4303
2008FA4051**

**IN COURT OF APPEALS
DISTRICT I**

KORRY L. ARDELL,

PETITIONER-APPELLANT,

V.

NICOLE MARIE THOMAS,

RESPONDENT-RESPONDENT.

NICOLE MARIE THOMAS,

PETITIONER-RESPONDENT,

V.

KORRY L. ARDELL,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
KAREN E. CHRISTENSON, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Korry L. Ardell appeals from an order dismissing his petition for an injunction against Nicole Marie Thomas, and from an order granting Thomas’s petition for a domestic abuse injunction against him.¹ We conclude that there was sufficient evidence to support the domestic abuse injunction entered against Ardell, precluding him from contact with Thomas.² Therefore, we affirm.

¶2 Ardell and Thomas met through an online dating service. After dating briefly, Ardell continued to contact Thomas and monitored her email communications, despite Thomas’s requests that Ardell “leave [her] alone.” Thomas planned a vacation with a “new love interest” through Travelocity. Ardell falsified a communication that appeared to be from Travelocity, changing Thomas’s flight. Thomas, unaware of and relying on the falsification, missed her scheduled flight, and incurred expense and aggravation in purchasing a new ticket and renting a car to salvage her vacation plans.

¹ The order dismissing Ardell’s petition for an injunction is challenged in Appeal No. 2008AP2659; the order granting Thomas’s petition for a domestic abuse injunction is challenged in Appeal No. 2008AP2660.

² Ardell affirmatively waives his challenge to Appeal No. 2008AP2659. Responding to Thomas’s claim that he did not challenge the dismissal of his petition for an injunction in Appeal No. 2008AP2659, Ardell states in his reply brief that he “has not and will not be making any argument on 2008AP2659 and the decision not to address this matter is a strategic decision and therefore, this issue will not be addressed.”

¶3 Furious with Ardell, Thomas demanded reimbursement of her extra expense from Ardell, caused by his falsifying the flight change. Ardell came to Thomas's home ostensibly to reimburse her. Once Ardell arrived, there was an altercation, although each party described the incident differently.

¶4 Each party sought an injunction against the other. The trial court granted Thomas an injunction against Ardell, and dismissed Ardell's petition against Thomas.³ Although Ardell appealed from both orders, he has waived his challenge to the dismissal of the injunction he sought against Thomas.⁴ Consequently, we only review the injunction granted to Thomas against Ardell.

¶5 WISCONSIN STAT. § 813.12(4)(a)3. (2007-08) authorizes the issuance of an injunction if the trial court "finds reasonable grounds to believe that the respondent has engaged in ... domestic abuse of the petitioner."⁵ Domestic abuse is defined as the "[i]ntentional infliction of physical pain, physical injury or illness" or "[a] threat to engage in [such] conduct" by one adult against another who have "had a dating relationship." WIS. STAT. § 813.12(1)(am)1. and 6. "Reasonable grounds" is defined as "more likely than not that a specific event has occurred or will occur." WIS. STAT. § 813.12(1)(cg).

³ The parties initially litigated their cross-petitions in separate hearings in front of two different circuit court commissioners: one issued an injunction against Ardell, another dismissed Ardell's petition against Thomas. Ardell appealed to the Milwaukee County Circuit Court, which conducted a *de novo* evidentiary hearing. The court then affirmed the court commissioners' orders, issuing an injunction against Ardell, but not against Thomas.

⁴ See n.2 *supra*.

⁵ All references to the Wisconsin Statutes are to the 2007-08 version.

¶6 “We will not set aside the [trial] court’s factual findings unless they are clearly erroneous.” *Welytok v. Ziolkowski*, 2008 WI App 67, ¶23, 312 Wis. 2d 435, 752 N.W.2d 359. The trial court is the ultimate arbiter of credibility. *See Johnson v. Merta*, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980). “We independently review the [trial] court’s conclusion, based on the established facts, whether such reasonable grounds exist.” *Welytok*, 312 Wis. 2d 435, ¶23. We review the parties’ testimony, in addition to the testimony of Gayle Nicole Haack, Thomas’s tenant and neighbor, who witnessed the altercation.⁶

¶7 Thomas testified that when Ardell arrived, he refused to reimburse her, calling her a vile name. Thomas testified that Ardell then hit her in the face leaving a red mark, and that a fight ensued. Later that night, Thomas claimed that she received a text message from Ardell that said “you are lucky the .22 didn’t go off.” Thomas also testified that she was afraid of Ardell, who was hacking into her emails, contacting her place of employment, and repeatedly harassing her and attempting to contact her despite her repeated requests that he “leave [her] alone.”

¶8 Haack testified that she telephoned the police who later arrived at the scene. Haack confirmed that she heard Ardell call Thomas “a C word” and saw him “push[] [Thomas’s] face.” Haack testified that Thomas’s face was “bright red” and that Thomas had “some red stuff” on her neck. Haack also overheard Ardell say “something to the fact of I hope the .22 don’t go off.” Haack testified that she was afraid for herself and for her child.

⁶ A police officer and a police dispatcher also testified; however, their testimony is not significant to these appeals.

¶9 Ardell testified that when he arrived at Thomas’s home, Thomas was extremely agitated, and after a verbal altercation, she hit him with a closed fist. Ardell claimed that he did not fight back, but that he attempted to “squirm away” from her. Ardell also testified that Thomas hit him in the nose, prompting him to see a doctor.

¶10 The trial court found Thomas credible in her testimony of her “fear” and “panic” of Ardell. The trial court described Thomas as “almost on the verge of hysteria” from her encounter with Ardell. The trial court found that there was “[i]ntentional infliction of physical pain” by both parties. It characterized Thomas’s hitting Ardell in the face as “a one time fight,” whereas it identified Ardell, as confirmed by Haack, as the one who “struck the first blow,” in “an ongoing series of incidents which [the trial court] ha[s] no reason to think ha[s] ended.” The evidence of Ardell’s falsifying Thomas’s itinerary, and his oral and text threats to Thomas support the trial court’s determination that Ardell’s conduct against Thomas was likely to continue.

¶11 Ardell contends that there was insufficient evidence that he and Thomas were in a “[d]ating relationship,” as required by WIS. STAT. § 813.12(1)(ag). Thomas testified that they had dated briefly. Ardell denied they were dating, but implied that he paid her “for sexual contact.” Notwithstanding Ardell’s implications, it was not clearly erroneous that what each party described constituted an “intimate social relationship.” *See id.* Consequently, the relationship, albeit described differently by Thomas than by Ardell, constituted a “[d]ating relationship.” *Id.*

¶12 Thomas established reasonable grounds for the issuance of the injunction. The evidence was sufficient to support the trial court's injunction precluding Ardell from contacting Thomas pursuant to WIS. STAT. § 813.12(4).

By the Court.—Orders affirmed.

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

