

EQUITABLE RELIEF: THE KEY TO CREATIVE JUSTICE

By Jeffrey R. Dion, Esq.

Justice comes in many forms. A stalking victim who turns to a civil attorney for assistance is often more concerned with safety and peace of mind than monetary damages. Consequently, equitable relief—in addition to monetary damages—may provide stalking victims more of the resolution they seek, or at least pull disparate parties a little closer to the settlement table.

Attorney Daniel Wolf believes the case he describes in the accompanying article settled because the parties agreed to a lifetime restraining order that would protect the plaintiff from contact with her stalker. While a court-imposed protective order would be limited to one year, the court could enforce the lifetime restraining order because the parties agreed to it. As the number of civil stalking cases has increased, so has the use of combined legal and equitable remedies.

In the case of *Haverbush v. Powelson*,¹ the plaintiff was an orthopedic surgeon who was stalked by a nurse who worked at the same hospital. Soon after they met, Nurse Powelson began to shower Dr. Haverbush with gifts, though he expressed no romantic interest in her. Powelson began to write letters to Haverbush that alternately threatened him and expressed her love for him. She also wrote disparaging letters to Haverbush's daughter and his fiancée's mother. She then began to threaten Haverbush and his fiancée. Haverbush sued, and the trial court awarded him monetary damages, as well as issuing a permanent injunction forbidding Powelson from contacting or harassing Haverbush. Additionally, the trial court ordered Powelson to apply for a lateral transfer to a position of equivalent duties, compensation, and benefits in a different part of the hospital so as to avoid to the greatest extent possible any contact between the parties.

The appellate court found Powelson's argument that the order requiring her to apply for a transfer was ineffectual and fraught with enforcement problems to be without merit. The court pointed out that all the order required Powelson to do was apply. If a lateral position was not available or did not exist, she would comply with the order simply by applying.

The Wisconsin Court of Appeals used a "carrot and stick approach" in *Gianoli v. Pfeiderer*.² In that case, the trial court awarded \$12,000 in compensatory damages, \$200,000 in punitive damages, and injunctive relief against the defendants for stalking and harassing the plaintiffs over a land dispute. The court also crafted an unconventional equitable remedy. It delayed enforcement of the punitive damages for a one year period, and directed that if the Pfeiderers sold their home and moved within that year, the punitive damages would be vacated.

The Pfeiderers raised several issues on appeal, including an assertion that the punitive damages award was unconstitutionally excessive. One of the measures the Court of Appeals used to evaluate whether the punitive damages award was excessive was to compare it to the criminal and civil penalties that could have been imposed for similar conduct. The court found that many of the Pfeiderers' activities could be construed as violations of Wisconsin's stalking, defamation, and trespass laws, which exposed them to significant financial penalties and incarceration. Accordingly, the financial aspect of the punitive damages award was not excessive.

The Court of Appeals then considered, as a matter of first impression, the question of whether the trial court had the power to make the punitive damages award conditional. The court found no fault with the trial court's intention to separate the parties, and held that "under the unique circumstances of this case, the conditional punitive award was a reasoned and appropriate exercise of the trial court's discretion to fashion an appropriate remedy."

By focusing on a stalking victim's real-world needs, the victims' bar and the courts can develop fair, creative remedies that not only provide equitable relief, but may also increase the parties' satisfaction with the results of litigation. **W**

1. 551 N.W.2d 206 (Mich. Ct. App. 1996).
2. 563 N.W.2d 562 (Wis. Ct. App. 1997).

the payphones were pinpointed and marked on the aerials and maps, and the visual effect was striking: the payphone locations nearly created a "ring" around the parties' respective homes.

Depositions were taken from the parties, the primary investigating sheriff's deputy, Jane Doe's therapist, three of Doe's friends that Smith had contacted,

and Doe's son. The witnesses' statements, along with the phone records, sheriff surveillance tapes, and surveillance tapes from Jane Doe's yard and vehicle, clearly established that from 1995 to 1997, John Smith engaged in a continuous course of conduct stalking Jane Doe, including calling her repeatedly, driving past her house, driving by stores and restaurants

where she was shopping or dining, and contacting her friends and family members.

Expert Testimony

Jane Doe retained forensic psychologist Dr. J. Reid Meloy of San Diego as an expert witness. Dr. Meloy is one of the country's foremost authorities on the psychology of stalking and the editor of