NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 1891

CARLA ROSE THOMAS

VERSUS

CLINTON HYATT, III

Judgment Rendered: AUG 06 2013

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On Appeal from
The Family Court
In and for the Parish of East Baton Rouge
State of Louisiana
Trial Court No. 185,355

The Honorable Ronald D. Cox, *Ad Hoc* Judge Presiding

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* * * * *

BEFORE: PARRO, WELCH, AND DRAKE, JJ.

RHP by Edwards Concurs in the Result

DRAKE, J.

This is an appeal by defendant, Clinton Hyatt, III, from a protective order granted by the trial court pursuant to Louisiana Revised Statute 46:2151 (Protection from Dating Violence Act) in favor of plaintiff, Carly Rose Thomas.[1] For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant dated for approximately three years until plaintiff terminated the relationship in December of 2010.[2] According to plaintiff, when she began dating another person in April 2011, defendant "freaked out." Defendant then called plaintiff, threatened to commit suicide. According to plaintiff, she could hear the sound of a shotgun being cocked in the background as the defendant made his threat. Following this incident, defendant's mother had defendant committed to Brentwood Hospital in Shreveport, Louisiana for seventy-two hours. Defendant was diagnosed with depression, alcohol abuse, and mild psychosocial stressors. It was recommended that he enter follow-up treatment through Alcoholics Anonymous or Narcotics Anonymous. Defendant admitted at the June 27, 2012 hearing that he had only attended a "couple" of meetings following his release from Brentwood Hospital.

The plaintiff testified that on one occasion in April 2011, she found defendant outside her house, behind the fence, sitting in a lawn chair, and watching her house. Plaintiff further testified that the defendant had previously bruised her on a few occasions when she would try to walk away from him and he would grab her arms. Plaintiff admitted that defendant had never directly threatened her life,

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[1] The caption lists the plaintiff as "Carla Rose Thomas," however, the plaintiff's actual name is "Carly Rose Thomas."

[2] Based upon the information in the record, plaintiff would have been seventeen years of age when the relationship with defendant ended.

but knowing that he had a shotgun and finding him behind her house, she believed he could possibly hurt her.

Months later, defendant again harassed plaintiff by letting the air out of all four of her tires. Although defendant denied doing so, the evidence in the record indicates that he told a friend that he was going to let the air out of the plaintiff's tires. Defendant was charged with criminal mischief due to the incident, and the fine was paid.[3]

The evidence in the record also contains numerous text messages from defendant to plaintiff on plaintiff's birthday, February 25, 2012, beginning at 1:00 a.m. The text messages contain vulgar language, call the plaintiff many derogatory names, and state that defendant is "waiting for the day somebody tries laying a finger on me." On April 26, 2012, the defendant again texted plaintiff calling her offensive names. On May 26, 2012, defendant sent plaintiff derogatory text messages after realizing plaintiff was at the Bayou Country Superfest, the same function defendant was attending. At the hearing on the protective order, defendant testified that he was "emotionally upset" and decided to send plaintiff "some nasty things." Plaintiff's brother-in-law contacted defendant and demanded he cease texting plaintiff. Defendant responded with a picture of Jesus flipping off the viewer. During most of these texts, plaintiff begged the defendant to leave her alone. Plaintiff also testified at trial that she wanted to be left alone and that she was scared of the defendant.

Defendant admitted that when he became "emotionally upset" on at least two occasions, he texted vulgarities to plaintiff, which was triggered by hearing about her and seeing a picture of her on Facebook. He also testified that he never

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[3] Defendant denied personally paying the $50 fine; however, he suggested that a member of his family may have paid it.

physically hurt plaintiff and explained that the bruises on her arm resulted from an argument where plaintiff was physical with him.

After hearing all the testimony and viewing the evidence, the family court granted the Protective Order, which ordered, among other things that: (1) defendant not threaten or harass plaintiff; (2) defendant not contact plaintiff by any means; (3) defendant stay 100 yards away from plaintiff, her residence, and her work or school; (4) defendant not damage the property of plaintiff; and (5) defendant pay attorney fees of $750 to the Battered Women's Program and court costs. It is from this Protective Order that defendant appeals.

ASSIGNMENTS OF ERROR

Defendant assigns as errors that the family court erred in granting the Protective Order because there was a lack of evidence of abuse and because there was no familial or recent dating relationship between the parties at the time the protective order was sought.

STANDARD OF REVIEW

The trial court has vast discretion with regard to the issuance of protective orders under the Domestic Abuse Assistance statutes, and the trial court's decision will not be reversed on appeal unless an abuse of that discretion is clearly shown. *See Rouyea v. Rouyea,* 2000-2613 (La. App. 1 Cir. 3/28/01), 808 So. 2d 558, 561; *see also Mitchell v. Marshall,* 2002-0015 (La. App. 3 Cir. 5/1/02), 819 So. 2d 359, 361. Additionally, the trial court sitting as a trier of fact is in the best position to evaluate the demeanor of the witnesses, and its credibility determinations will not be disturbed on appeal absent manifest error. *Ruiz v. Ruiz,* 2005-175 (La. App. 5 Cir. 7/6/05), 910 So. 2d 443, 445.

LAW AND ANALYSIS

Pursuant to the Domestic Abuse Assistance statutes, La. R.S. 46:2131, *et seq.,* upon good cause shown in an *ex parte* proceeding, the court may issue a temporary restraining order to protect a person who shows immediate and present danger of abuse. *See* La. R.S. 46:2135(A); *Rouyea,* 808 So. 2d at 560. If a temporary restraining order is granted without notice, the matter shall be set for a hearing within twenty-one days, at which time, cause must be shown why a protective order should not be issued. At the hearing on the rule for the protective order, the petitioner must prove the allegations of abuse by a preponderance of the evidence. La. R.S. 46:2135(B). Additionally, the trial court, sitting as a trier of fact, is in the best position to evaluate the demeanor of the witnesses, and its credibility determinations will not be disturbed on appeal absent manifest error. *Ruiz v. Ruiz,* 2005-175 (La. App. 5 Cir. 7/26/05), 910 So. 2d 443, 445.

Evidence of Abuse

Defendant claims that, at the hearing in family court, there was a lack of evidence of abuse. Specifically, he claims that there was no evidence of physical abuse of plaintiff. Defendant relies upon *Culp v. Culp,* 42,239 (La. App. 2 Cir. 6/20/07), 960 So. 2d 1279, *writ not considered,* 2007-1836 (La. 10/5/07), 964 So. 2d 378, and *Rouyea.*

Louisiana Revised Statutes 46:2131 provides the purposes of the Domestic Abuse Assistance statutes, as follows:

> The purpose of this Part is to recognize and address the complex legal and social problems created by domestic violence. The legislature finds that existing laws which regulate the dissolution of marriage do not adequately address problems of protecting and assisting the victims of domestic abuse. The legislature further finds that previous societal attitudes have been reflected in the policies and practices of law enforcement agencies and prosecutors which have resulted in different treatment of crimes occurring between family or household members and those occurring between strangers. It is the

> intent of the legislature to provide a civil remedy for domestic violence which will afford the victim immediate and easily accessible protection. Furthermore, it is the intent of the legislature that the official response of law enforcement agencies to cases of domestic violence shall stress the enforcement of laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated.

Domestic abuse is defined as including, but "not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family or household member against another." La. R.S. 46:2132(3). However, family arguments that do not rise to the threshold of physical or sexual abuse or violations of the Criminal Code are not in the ambit of the Domestic Abuse Assistance statutes. *Rouyea,* 808 So. 2d at 561.

The legislature has also recognized that not all violence occurs between family members. The Protection From Dating Violence Act, provides that "A victim of a dating partner ... shall be eligible to receive all services, benefits, and other forms of assistance provided by [La. R.S. 46:2121, *et seq.*]. La. R.S. 46:2151(A). A "dating partner" is defined as "any person who is or has been in a social relationship of a romantic or intimate nature with the victim" and where the existence of such a relationship shall be determined by the court taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved. La. R.S. 46:2151(B). Similar to La. R.S. 46:3132(3), the legislature defined "dating violence" as including but "not limited to physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one dating partner against the other." La. R.S. 46:2151(C).

The cases cited by defendant are distinguishable from the present matter. *Culp* involved a custody dispute over a child and conflicting testimony over whether the father had swung a belt in the direction of the mother and child to get the child to go with him on his visitation. The court stated, "[f]amily arguments that do not rise to the threshold of physical or sexual abuse [or] violations of the criminal code are not in the ambit of the Domestic Abuse Assistance Law." *Culp,* 960 So. 2d at 1282. The second circuit disagreed that the language of the statute, "includes, but is not limited to," included general harassment. The court noted that temporary restraining orders and protective orders should not be issued for every unpleasant child custody exchange, contentious relationship between former spouses, or parent bickering. *Id.* at 1283.

In *Rouyea,* Mrs. Rouyea, who was separated from her husband, entered the home where he was sleeping, was very aggressive toward Mr. Rouyea, threw a picture frame at him, and attempted to grab his wallet. Mr. Rouyea grabbed Mrs. Rouyea's arm and forced her down to the floor. The court found that Mr. Rouyea's only physical action was defensive and reversed the protective order which had been granted by the trial court. *Royeau,* 808 So. 2d at 560-62.

Defendant argues that although the text messages he sent were vulgar and offensive, he never threatened to physically harm the plaintiff. Therefore, he claims that the family court abused its discretion in granting the protective order. We note that "dating violence" "includes but is not limited to physical or sexual abuse and **any offense against the person as defined in the Criminal Code of Louisiana**, except negligent injury and defamation, committed by one dating partner against the other." La. R.S. 46:2151(C) (emphasis added). The Criminal Code contains many offenses against the person, one of which is assault. Assault is "an attempt to commit a battery, or the intentional placing of another in

reasonable apprehension of receiving a battery." La. R.S. 14:36. The evidence at trial included testimony that defendant called plaintiff on one occasion, threatened suicide, and audibly cocked a shotgun. Plaintiff testified that she felt threatened, "because if he's running around LSU with a shotgun and sitting behind my house watching me ... that tells me that he possibly could hurt me too. ... I don't know what he's capable of doing." The evidence supports a finding that the actions of defendant intentionally placed plaintiff in reasonable apprehension of receiving a battery.

Additionally, the Criminal Code contains the offense of stalking, which is defined in La. R.S. 14.40.2(A) as:

> Stalking is the intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress. Stalking shall include but not be limited to the intentional and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal or behaviorally implied threats of death, bodily injury, sexual assault, kidnap[p]ing, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted.

The totality of the evidence at trial demonstrated that defendant's actions also fell within the stalking statute. Defendant was found watching plaintiff's house on one occasion from behind the fence. He also appeared where plaintiff was one evening and let the air out of her tires. Although defendant did not directly threaten plaintiff's life, his actions were "behaviorally implied threats" of bodily injury. We find defendant's actions and text messaging fall within the definition of stalking, i.e. "repeated ... harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress." La. R. S. 14:40.2(A). Since defendant's actions also fell within the stalking statute, he

arguably did commit an offense against a person within the meaning of La. R.S. 46:2151(C).

Finally, defendant also sent plaintiff numerous vulgar and offensive text messages. Another offense against a person is cyberstalking which is defined in Louisiana Revised Statutes 14:40.3(B) as:

> Cyberstalking is action of any person to accomplish any of the following:
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> * * *
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> (2) Electronically mail or electronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying, or harassing any person.

In the present case, the evidence supports a finding that the text messages sent to plaintiff were for no other reason than to harass her. Repeatedly, plaintiff asked defendant to leave her alone. However, on several occasions he sent her harassing text messages. Plaintiff and defendant had dated for approximately three years. Plaintiff was approximately fourteen to seventeen years of age at the time she was in a relationship with defendant. Between fourteen months and seventeen months after the relationship terminated, defendant texted plaintiff vulgar messages on three separate occasions. Plaintiff then filed a petition for protection from abuse to prohibit defendant from taking numerous actions including "harassing" and "stalking" her.

The same arguments made by defendant were made in *Harper v. Harper,* 537 So. 2d 282 (La. App. 4 Cir. 1988). The fourth circuit held that "[t]he Domestic Abuse Assistance Statute incorporates as a standard any offense against the person as defined by the criminal code. Thus assaultive behavior is domestic abuse." *Id.* at 285. The court also noted that "[f]amily arguments that do not rise to the threshold of physical or sexual abuse or violation or the criminal code are not in

the ambit of the Domestic Abuse Assistance Statute[.] [E]ach case must be reviewed individually." *Id.*

We agree with *Harper* and hold that the Protection From Dating Violence Act, read in conjunction with the Domestic Abuse Assistance Satute, is broad enough to include the assaultive behavior of defendant, and includes defendant's stalking and cyberstalking behavior.

Dating Relationship

Defendant's second assignment of error is that the family court abused its discretion in granting a Protective Order when there was no familial or recent dating relationship or cohabitation arrangement between the parties. Defendant's argument is that since **family** arguments, which do not rise to the level of physical or sexual abuse or violations of the Criminal Code as it relates to offenses against a person are not sufficient violations of the Domestic Abuse Assistance statute, then ex-boyfriend/ex-girlfriend arguments also do not suffice. Notwithstanding the fact that this court has already ruled that defendant's actions **did** rise to violations of the Criminal Code as it relates to offenses against a person, Louisiana Revised Statute 46:2151 specifically applies to a "dating partner" and affords a "dating partner" the same protections as provided to a family member pursuant to Louisiana Revised Statutes 46:2131, *et seq.* Louisiana Revised Statutes 46:2151 specifically defines "dating partner" as any person "who is **or has been** in a social relationship of a romantic or intimate nature with the victim...." (Emphasis added). It is undisputed that the plaintiff and defendant had been in a romantic relationship. Defendant points to no cases that hold that the parties must have a present romantic relationship, and the Protection from Dating Violence Act clearly provides otherwise. The Protection from Dating Violence Act was intended to protect dating partners from just the type of activity in which defendant engaged,

continually harassing a previous dating partner even though the relationship was terminated. There is nothing in the statute that limits the time frame for a Protective Order to issue. To hold otherwise would render those who have terminated a relationship defenseless.

We also note that the plaintiff and defendant were never married. Unlike the parties in *Culp* and *Rouyea*, where the parties were either married or divorced and had reason to contact each other, the defendant and plaintiff in this matter were never married. Defendant admitted to contacting plaintiff, when he became "emotionally upset," for the purpose of sending her "nasty things." Therefore, defendant readily admits to harassing plaintiff, which is distinguishable from the family arguments in *Culp* and *Rouyea.*

After a thorough review of the record and the credibility determinations facing the family court, we find no abuse of the family court's discretion in concluding that plaintiff established by a preponderance of the evidence that defendant committed acts of "dating violence" warranting the issuance of a protective order against him. Accordingly, we hereby affirm the judgment granting a protective order in favor of plaintiff.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of the appeal are assessed to defendant/appellant, Clinton Hyatt, III.

AFFIRMED.