

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0296

KIMBERLY CORNETT

VERSUS

CYNTHIA CORNETT

Judgment Rendered: NOV 01 2013

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On Appeal from the Twenty-First Judicial District Court
In and for the Parish of Livingston
State of Louisiana
No. 137683

Honorable Brenda Bedsole Ricks, Judge Presiding

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* * * * *

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

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McCLENDON, J.

Cynthia Cornett appeals a judgment that granted a permanent injunction, which restricted her from abusing, harassing, stalking, or threatening her daughter-in-law and grandchildren, precluded her from traversing within one hundred yards of daughter-in-law and grandchildren, and precluded her from traversing within one hundred yards of her daughter-in-law's residence or place of employment. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On June 22, 2012, Kimberly Cornett filed a Motion for Temporary Restraining Order and Preliminary Injunction against her mother-in-law, Cynthia Cornett. Therein, Kimberly alleged that she "has serious criminal charges pending against her husband," who is Cynthia's son. Kimberly asserted that Cynthia "has continually harassed and threatened petitioner about proceeding with the charges."

Kimberly also alleged that on June 20, 2012, while she and her two minor daughters were at a hair salon in Maurepas, Louisiana, Cynthia called the salon. Kimberly alleged that it was her belief that Cynthia was attempting to determine Kimberly's location. Thereafter, Kimberly and her children left the hair salon and went to Ascension Optical in Gonzales. After they arrived at Ascension Optical, Cynthia showed up at Ascension Optical and approached the older of the two minor children, and according to Kimberly, grabbed her daughter's arm "forcefully" and "yelled profusely" at Kimberly.¹

Based on the foregoing allegations, the trial court granted a temporary restraining order prohibiting, among other things, Cynthia from contacting Kimberly or going within one hundred yards of Kimberly's residence or employment. The trial court also set the matter for hearing for Cynthia to show cause why the restraining order should not issue in the form and substance of a permanent injunction.

¹ The petition mistakenly alleges that the incident occurred in the parking lot, but all parties agree that the incident occurred in Ascension Optical.

Kimberly asserts that after filing her petition, she learned from a mutual friend, Jeanne Delhommer, that Cynthia, who was an authorized user able to access Kimberly's phone account, reviewed the numbers of the incoming and outgoing phone calls to and from Kimberly's phone. According to Jeanne, who testified at the hearing, Cynthia called her to confirm that she had spoken to Kimberly and asked what she and Kimberly had talked about. Jeanne acknowledged that after Cynthia's inquiry, she talked to Kimberly on the phone later that day. After her second conversation with Kimberly, Jeanne indicated that she received another phone call from Cynthia sarcastically thanking her for telling Kimberly that Cynthia was reviewing Kimberly's calls.

At trial, Cynthia admitted that she reviewed the phone numbers on Kimberly's phone, but contended that she did so to ensure that her son was not trying to contact Kimberly or the children in violation of a court order. Cynthia also admitted that she called the salon to ask a question about hair coloring, but testified that she was unaware that Kimberly and the minor children were there. She also testified that she broke her glasses that same day, so she went to Ascension Optical to get them fixed. Cynthia denied that she knew Kimberly and her grandchildren were at Ascension Optical when she stopped there.

According to Cynthia, when she saw her grandchildren at Ascension Optical, she just "touched her [older granddaughter's] shoulder" and said "Hey, Sissy, because that's what I always called her." She indicated that she was overwhelmed from not seeing her grandchildren for six months. At that point, Cynthia asserts that Kimberly told her that she "was an unfit and the poorest excuse for a grandmother she had ever seen." Cynthia testified that she left Ascension Optical because of the confrontation.

Bridget LeBlanc, an employee of Ascension Optical, testified that Cynthia did not approach her granddaughter in a hostile manner and merely put her hand on her granddaughter's shoulder. She denied that the confrontation between Kimberly and Cynthia involved screaming where the entire place could hear, but admitted it was "enough to get somebody's attention."

In contrast, Kimberly testified that Cynthia grabbed her older daughter's arm "forcefully," at which point Kimberly told Cynthia "they do not want to talk to you. You have betrayed them. You did not believe your grandchild." Kimberly testified that Cynthia "started screaming, shut up, shut up, shut up, and backing up. And I said, you are pitiful excuse for a grandmother. And she started screaming, shut up, shut up, shut up. And then she looked at me and threatened me and said, restraining order, babe, and walked out." Kimberly indicated that her older daughter is "not a crier and she was so afraid. ... When we got in the car, she cried for an hour."

According to the older daughter, when Cynthia arrived at Ascension Optical "she grabbed my arm and it really, it scared me." She indicated that her grandmother was "using force" and "pulling" her arm. She also testified that she had seen the things that her grandmother had done to the family. She testified that neither she nor her family wanted to talk to or see her grandmother. She acknowledged that her mother addressed her grandmother first, indicating that her mother told her grandmother that she had "betrayed us and she was a pitiful excuse for a grandmother." In response, her grandmother said "shut up, shut up, and then she said, restraining order, babe; threatening my mom."

Following the hearing, the trial court granted Kimberly's request for a permanent injunction. A written judgment was subsequently entered restraining and prohibiting Cynthia "from abusing, harassing, stalking, following or threatening" Kimberly and the two minor children; "from contacting ... personally, electronically, by phone, in writing, or through a third party" Kimberly and the two minor children; and "from traversing within 100 yards" of Kimberly and the minor children, Kimberly's residence, and Kimberly's workplace.

Cynthia has appealed, assigning the following as error:

1. The trial court abused its discretion in granting a permanent injunction when the evidence failed to show irreparable injury, loss or damage may result to applicant.
2. The trial court erred in granting the permanent injunction as to the minor children when they were not parties to the action.

3. The trial court erred in granting the permanent injunction prohibiting Cynthia Cornett from traversing within a distance of one hundred yards of Kimberly Cornett [and the minor children] or Kimberly's residence or place of employment because it is unduly restrictive.

DISCUSSION

An applicant must show that irreparable injury, loss or damage may otherwise result to the applicant before an injunction may be issued. LSA-C.C.P. art. 3601. Courts are generally reluctant to issue an injunction to restrain torts such as defamation or harassment. **Lassalle v. Daniels**, 96-0176 (La.App. 1 Cir. 5/10/96), 673 So.2d 704, 709, writ denied, 96-1463 (La. 9/20/96), 679 So.2d 435, cert. denied, 519 U.S. 1117, 117 S.Ct. 963, 136 L.Ed.2d 848 (1997). An injunction is a harsh, drastic and extraordinary remedy and is only issued where the petitioner is threatened with irreparable loss or injury without adequate remedy at law. Irreparable injury is that which cannot be adequately compensated in damages, or for which damages can not be compensable in money. **Id.**

The issuance of a permanent injunction takes place only after a trial on the merits, in which the burden of proof must be founded on a preponderance of the evidence, rather than a prima facie showing. **Hughes v. Muckelroy**, 97-0618 (La.App. 1 Cir. 9/23/97), 700 So.2d 995, 998. The question of whether an injunction should be granted or denied is addressed to the sound discretion of the trial court and the trial court's decision will be disturbed on review only in cases where a clear abuse of its discretion has been shown. **Lassalle v. Daniels**, 673 So.2d at 708.

In her first assignment of error, Cynthia asserts that the trial court abused its discretion in granting the permanent injunction. Cynthia maintains that the injunction was based solely on one incident at Ascension Optical. Cynthia contends that there was no evidence or testimony presented that Cynthia presented any type of threat to Kimberly or the minor children that would have caused irreparable injury, loss, or damage.

Cynthia also maintains that the meeting at Ascension Optical occurred by chance, and she had little or no contact with Kimberly or her granddaughters for six months preceding this incident. Although Cynthia maintains that the incident at Ascension Optical was the sole basis for the injunctive relief, the record also reflects that Cynthia admitted that she reviewed the incoming and outgoing calls to and from Kimberly's telephone and that she even called one of those individuals to inquire about a conversation. Additionally, while Cynthia posits that her meeting with Kimberly and her children at Ascension Optical was happenstance, the trial court could have believed otherwise, given Cynthia's acknowledgment that she reviewed Kimberly's calls and the events that happened earlier that day.

While there were different versions regarding the nature of the contact between Cynthia and her granddaughter at Ascension Optical, the trial court chose to believe the granddaughter's testimony. Where there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous or clearly wrong. **Stobart v. State through Dept. of Transp. and Development**, 617 So.2d 880, 882 (La. 1993). Considering this testimony in light of the entirety of the record, we cannot conclude that the trial court abused its discretion in granting the injunctive relief sought.

In her second assignment of error, Cynthia asserts that the trial court erred in granting the permanent injunction as to the minor children when they were not specifically named as parties in the action. However, in her petition, Kimberly specifically alleged that "she and her minor children are in imminent danger." Clearly, Kimberly was making claims to keep Cynthia away from her and the minor children. Moreover, the testimony and evidence introduced at the hearing concerned Cynthia's contact with both Kimberly and the minor children. In light of the foregoing and given that Kimberly has a duty to protect her minor children as recognized by LSA-C.C. art. 235,² we find no error in the trial court

² Louisiana Civil Code article 235 provides:

issuing the restraining order in Kimberly's favor to preclude contact with Kimberly and the minor children. This assignment of error is without merit.

In her final assignment of error, Cynthia asserts that the injunction is too broad and should be modified so as not to infringe upon her access to public places. We note that in her prayer for relief, Kimberly specifically prayed for an order prohibiting defendant from going within one hundred yards of her residence and place of employment. Cynthia produced no evidence at the hearing regarding why entering the order as prayed for would be unduly restrictive. Although the record reflects that Kimberly is a teacher in Livingston Parish, it does not specifically indicate at which particular school nor does the record establish that Cynthia has any reason to visit said school.³ Accordingly, based on the record before us, we find no merit in assignment of error number three.

CONCLUSION

For the foregoing reasons, the December 18, 2012, judgment is affirmed. Costs of this appeal are assessed to appellant, Cynthia Cornett.

AFFIRMED.

Fathers and mothers owe protection to their children, and of course they may, as long as their children are under their authority, appear for them in court in every kind of civil suit, in which they may be interested, and they may likewise accept any donation made to them.

³ The issue raising the restrictive nature of the restraining order was not specifically raised at the trial court level. While Cynthia alleges that the restriction prohibits her from going to public places where her other grandchildren may be present, the record is devoid of any specific evidence in this regard.