NOT DESIGNATED FOR PUBLICATION

BRYCE W. REVELEY	*	**NO. 2001-CA-0033**
VERSUS	*	**COURT OF APPEAL**
ELROY W. ECKHARDT	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 97-19831, DIVISION "DRS-3"
Honorable C. Hunter King, Judge

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Chief Judge William H. Byrnes, III

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(Court composed of Chief Judge William H. Byrnes, III, Judge Steven R. Plotkin, and Judge Miriam G. Waltzer)

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APPEAL DISMISSED

The former husband, Elroy W. Eckhardt ("Mr. Eckhardt"), seeks review of a March 10, 2000 judgment.

FACTS AND PROCEDURAL HISTORY

This action began with the filing of a petition for divorce pursuant to La. C.C. art. 102 by the former wife, Bryce Reveley ("Ms. Reveley"), against her former husband, Mr. Eckhardt. In her petition, the former wife also requested, among other things, ancillary relief in the form of a temporary restraining order and preliminary and permanent injunctions prohibiting the former husband and his agents from any form of physical abuse or harassment against her.

On February 2, 1998, the parties stipulated in open court to mutual injunctions against harassment. That stipulation was reduced to writing in a February 22, 1999 judgment whereby the trial judge ordered that "mutual preliminary injunctions hereby issue herein preventing any party from in any way harassing the other party."

In March 1998, the former wife noticed the former husband's

deposition and requested that he produce certain documents at that deposition. More specifically, the former wife sought any documentation in the her former husband's possession or under his control supporting his allegation that the former wife has had an adulterous relationship subsequent to her marriage, any documentation in the former husband's possession or under his control evidencing any E-mail taken or copied from the former wife's computer or any of her mail that the former husband had taken or copied, and copies of any letters written by the former husband to third parties, other than his attorney, concerning the former wife. In May 1998, the former wife filed a notice of deposition for records, only seeking documents allegedly removed from the former wife's studio, home, computer, trash, or any place else concerning Alan Caspi and the former wife's attorney, Robert C. Lowe. In addition, the former wife sought documentation in the former husband's possession evidencing letters written to third parties concerning the former wife and Alan Caspi, including all correspondence written to Mr. Caspi's wife.

On June 2, 1998, the former husband sought a protective order averring that the former wife's discovery request was over-broad, and that the information sought was not relevant or calculated to lead to the discovery of admissible evidence. Two days later, on June 4, 1998, the

former wife was granted a final divorce. On June 18, 1998, the former husband filed a motion to quash outstanding discovery arguing that, because a judgment of divorce had been rendered in the matter, there were no longer any justiciable issues pending before the court. Following a hearing, the trial judge denied the former husband's motion to quash. The former husband then filed an application for supervisory writs in this court. On November 5, 1998, this court granted the writ in part and remanded the case to the trial court for "limited consideration regarding relevancy of the materials sought by Appellee [the former wife] for purposes of the permanent injunction only."

In January 2000, in response to that remand, the former wife filed a motion to set a hearing to "determine the relevancy of the discovery sought by her for the purposes of the permanent injunction sought by her." At the hearing on February 22, 2000, the trial judge determined that the documents sought were relevant to the issue of the permanent injunction sought by the former wife and ordered them produced. The judgment rendered in conjunction with the hearing ordered the production of the documents at issue. In addition, it offered the following admonition:

> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the preliminary injunction against harassment issued pursuant to the parties' stipulation of February 2, 1998, and the Judgment signed February 22, 1999, remains in place and is

> ongoing. Further, Mr. Eckhardt is restrained, prohibited, and enjoined from publishing, publicizing, showing, or giving any of the documents, information, and items identified and requested in the above referenced Subponae [sic] to any third persons and, if so, such publication shall be deemed harassment, in contempt of the preliminary injunction, and subject to fine and possible incarceration. Ms. Reveley is also restrained from harassing Mr. Eckhardt, pursuant to that preliminary restraining order.

The former husband claims that, despite his attorney's vigorous objections to including the above quoted language in the judgment, both to opposing counsel and to the trial court's law clerk, the language was nonetheless included in the judgment signed by the court on March 10, 2000. Accordingly, on March 29, 2000, the former husband filed with the trial court a notice of intention to file supervisory writs from its March 10, 2000 judgment. This court denied that writ on June 22, 2000, finding no basis on the showing made for the exercise of our supervisory jurisdiction.

The former husband meanwhile had filed a motion and order for devolutive appeal of the March 10, 2000 judgment on May 8, 2000.

The former wife contends that the former husband's appeal is untimely based upon La. C.C.P. art. 3612. That article provides, in pertinent part, that: "An appeal from an order or judgment **relating to a preliminary injunction** must be taken and a bond furnished within fifteen days from the

date of the order or judgment." [Emphasis added.] Because the former husband did not take an appeal within fifteen days from March 10, 2000, the date of the judgment at issue, the former wife argues that the appeal time has run.

In *Box v. French Market Corp.*, 91-2250, 91-2251, 91-2252, 91-2253, 91-2254 (La. App. 4 Cir. 1/16/92), 593 So.2d 836, this court held that where the defendant failed to take an appeal within fifteen days of a judgment granting a preliminary injunction, as required by La. C.C. P. art 3612, that judgment was final. Accordingly, we granted plaintiff's motion to dismiss the appeal as untimely.

In *City of New Orleans v. Benson*, 95-2436 (La. App. 4 Cir. 12/14/95), 665 So.2d 1202, this court noted that "while a ruling on a preliminary injunction might be considered under supervisory jurisdiction to expedite its consideration, it should not be done where the applicant was dilatory in filing the application after the appeal time had run." *Id.* at p. 6, 665 So.2d at 1205.

As the former wife correctly points out, both the former husband's notice of intent to apply for supervisory writs and his motion for appeal were filed beyond the fifteen day delay for appeal found in La. C.C.P. art. 3612.

The former husband anticipated that the former wife would challenge

the timeliness of his appeal, as she had earlier argued, in response to his application for supervisory writs, that his application was untimely pursuant to La. C.C.P. art. 3612 for the reasons discussed above. The former husband contends that his appeal is not from a preliminary injunction. While he admits that the complained of judgment makes reference to the mutual preliminary injunction issued on February 22, 1999, he argues that the court issued a new injunction on March 10, 2000, which it failed to designate as preliminary. In addition, he argues that the injunction under review herein was not issued pending a hearing on a final injunction, and thus, it is in effect a final injunction.

The former husband's arguments are without merit. La. C.C.P. art. 3612 mandates that an appeal from an order or judgment **relating to a preliminary injunction** must be taken within fifteen days from the date of the order or judgment. The judgment at issue clearly **relates to a preliminary injunction** as it references the preliminary injunction issued pursuant to the parties' stipulation of February 2, 1998, and the Judgment signed on February 22, 1999. The trial court did not issue a new injunction on March 10, 2000. Instead, it merely clarified the existing preliminary injunction that had already been in place for several years. In addition, contrary to the former husband's assertion, the clarification of the existing

injunction was issued pending a hearing and resolution of a final injunction. As the motion setting the February 22, 2000 hearing stated, the purpose of that hearing was to determine the relevancy of the discovery sought by the former wife for purposes of the permanent injunction sought by her. The former wife obviously intends to pursue the permanent injunction that she requested in her original petition for divorce. She may set the permanent injunction for hearing after going through the discovery responses ordered produced in the March 10, 2000 judgment.

The judgment at issue relates to a preliminary injunction. The former husband's motion for appeal was not filed until more than fifteen days after the time allowed for appealing such orders. Accordingly, his appeal is dismissed as untimely.

APPEAL DISMISSED