

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

AMANDA REIMHERR BUCKERT,	§	
	§	
<i>Plaintiff,</i>	§	
	§	Civil Action No. SA-19-CV-727-XR
v.	§	
	§	
ZACHARY TRAYNOR,	§	
	§	
<i>Defendant.</i>	§	

ORDER ON MOTION FOR TEMPORARY RESTRAINING ORDER

On this date, the Court considered Plaintiff Amanda Reimherr Buckert’s Motion for Temporary Restraining Order (docket no. 2). After careful consideration, the Court GRANTS Plaintiff’s *ex parte* TRO. This case is set for a preliminary injunction hearing at **9 a.m. Monday, July 8, 2019.**

I. Background

Plaintiff, in her complaint, brings claims under Texas state law for public disclosure of private facts and intrusion on Plaintiff’s seclusion.¹ Docket no. 1. She alleges that Defendant Zachary Traynor sent an Instagram message to Plaintiff’s daughter and friends that said Plaintiff had an abortion in May 2019. *Id.* at 2. In June, Plaintiff alleges she was at a Houston hotel when Defendant flew from New Jersey to Houston and “engaged in stalking behavior” at the hotel. *Id.* Defendant allegedly “wrote an embarrassing message or drawing across the windshield of Plaintiff’s vehicle” at the hotel. *Id.* Plaintiff alleges a friend and hotel staff members had to monitor

¹ Plaintiff alleges this Court has diversity jurisdiction, as Plaintiff is a Texas citizen, Defendant is a New Jersey citizen, and Plaintiff seeks \$100,000 in damages for each of her two claims.

Defendant and a police report was filed against Defendant. *Id.* Further, Defendant has allegedly made sexually explicit posts on social media that reference Plaintiff. *Id.* As recently as June 6, Defendant allegedly threatened to post explicit photos of Plaintiff to social media if Plaintiff does not agree to engage “in a personal relationship with Defendant.” *Id.* at 3. Plaintiff seeks entry of a temporary restraining order against Defendant and a hearing on her request for a temporary injunction. Docket no. 2.

II. Discussion

Ex parte restraining orders should be limited to preserving the status quo only as long as necessary to hold a preliminary injunction hearing. *Granny Goose Foods, Inc., v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974).

a. FRCP 65(b)(1) Requirements

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (2) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required. FED. R. CIV. P. 65(b)(1).

Here, Plaintiff's affidavit shows a sufficient risk of immediate and irreparable injury. Plaintiff states that, in June 2019 alone, Defendant has: flown to Houston to rent a hotel in the hotel in which Plaintiff was staying; written on Plaintiff's windshield; repeatedly called and texted Plaintiff; threatened to post explicit photos of Plaintiff on social media; threatened to falsely report to Plaintiff's employer (Southwest Airlines) that she stole alcoholic beverages; created an Instagram account “contending that [Plaintiff], a married woman to another man, had an abortion

during May, 2019;” posted to social media “defaced photographs of [Plaintiff] scrawled with profanity;” and sent social media messages to Plaintiff’s family and friends that stated “sex was great” with Plaintiff. Docket no. 2 at 7. Plaintiff states that Defendant threatened to continue this conduct. *Id.* The Court considers this a sufficient showing of imminent and irreparable harm.

Second, Plaintiff’s attorney certifies that a copy of the TRO motion was sent by email to Defendant on June 17, 2019, and that Defendant responded by email “with a denial and discussion.” Docket no. 4. Plaintiff’s attorney mailed a copy to Defendant’s last known address on June 22, 2019. *Id.* Plaintiff’s attorney argues that notice is not required here because Defendant has recently stalked Plaintiff, shown up unexpectedly where Plaintiff is staying, and has disseminated private matters involving Plaintiff and has threatened the imminent release of additional private information. *Id.*

Having reviewed Plaintiff’s filings, the Court concludes Plaintiff has satisfied FRCP 65(b)(1).

b. Injunctive Relief

Further, under well-settled Fifth Circuit precedent, Plaintiff must demonstrate each of the following elements to be entitled to injunctive relief:

- (1) a substantial likelihood of success on the merits;
- (2) a substantial threat of irreparable injury if the court does not grant the requested relief;
- (3) that the threatened injury outweighs any harm that will result if the injunction is granted;
- and (4) that the grant of injunctive relief will not disserve the public interest.

Willrich v. United States, 2013 WL 3949026, at *1 (N.D. Tex. Aug. 1, 2013) (citing *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011)).

To determine the likelihood of success on the merits, the Court looks to the standards provided by the substantive law. *See Mississippi Power & Light Co. v. United Gas Pipe Line Co.*,

760 F.2d 618, 622 (5th Cir.1985). The factors that govern an application for a temporary restraining order are the same as those that govern a request for preliminary injunction. *Hill v. Green County School Dist.*, 848 F. Supp. 697, 703 (S.D. Miss. 1994).

An intrusion on seclusion claim requires that Plaintiff show (1) an intentional intrusion, physically or otherwise, upon another's solitude, seclusion, or private affairs or concerns, which (2) would be highly offensive to a reasonable person. *Valenzuela v. Aquino*, 853 S.W.2d 512, 513 (Tex. 1993). A claim for invasion of privacy due to public disclosure of private facts requires that "(1) publicity was given to matters concerning one's personal life, (2) publication would be highly offensive to a reasonable person of ordinary sensibilities, and (3) the matter publicized is not of legitimate public concern." *Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474 (Tex. 1995)

Based on Plaintiff's representations, Plaintiff has demonstrated a substantial likelihood of success on the merits. Next, the Court is persuaded of a substantial risk of injury to Plaintiff if no relief is granted. Finally, the Court is aware of no harm that would result if a TRO is granted, nor does it appear that a TRO would disserve the public interest. Thus, weighing all factors, the Court grants Plaintiff's motion for a TRO.

Accordingly, Defendant Zachary Traynor is enjoined from contacting Plaintiff directly or indirectly; from threatening Plaintiff by phone calls or any other form; from stalking Plaintiff; from sending messages or social media posts that contain sexually explicit pictures of Plaintiff or that contain any information regarding the personal life of Plaintiff. This TRO is valid for 14 days.

This case is set for a hearing on Plaintiff's request for a preliminary injunction on **Monday, July 8, 2019, at 9 a.m.** at the John H. Wood Courthouse, Courtroom No. 3, 655 E. Cesar Chavez Blvd., San Antonio, Texas.

It is so ORDERED.

SIGNED this 24th day of June, 2019.

A handwritten signature in black ink, consisting of a large, stylized initial 'X' followed by a series of loops and a long horizontal stroke extending to the right.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

