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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

FRANK CRAFT,
a/k/a FRANK SMYTHE CRAFT,

Appellant,

v.

CHRISTOPHER FULLER,
a/k/a CHRISTOPHER ELWIN FULLER,

Appellee.

Case No. 2D19-2891

Opinion filed May 27, 2020.

Appeal from the Circuit Court for Pinellas County; Christopher LaBruzzo, Judge.

James P. Mancuso of James P. Mancuso, PA, St. Petersburg, for Appellant.

Marc N. Pelletier of Russo Pelletier & Sullivan, P.A., St. Petersburg, for Appellee.

VILLANTI, Judge.

Frank Craft appeals the final judgment for injunction against cyberstalking that was entered in favor of Christopher Fuller. Because the evidence was legally

insufficient to support entry of the injunction, we reverse and remand for dismissal of the petition.[1]

Craft and Fuller are former friends and business partners who had a falling out of some sort several years ago. Since the falling out, they have filed petitions for injunction against stalking against each other at various times. In October 2018, they agreed to leave each other alone, and they voluntarily dismissed their respective injunction petitions. Nevertheless, shortly thereafter, Craft began posting tweets on his own personal Twitter feed using the hashtag "spoofingschmuck." Some of these tweets contained other comments as well, but none of them referenced Fuller by name. Fuller does not follow Craft on Twitter; however, some of Fuller's friends and family told him about Craft's tweets, and Fuller believed that those tweets were a direct reference to him because he had been arrested in the past for spoofing.[2]

In response to being notified of these tweets, Fuller filed a new petition for injunction against Craft. In that petition, Fuller alleged that Craft's tweets using the "spoofingschmuck" hashtag were directed at him and that as a result of these tweets, he had suffered substantial emotional distress. At a hearing on the petition, Fuller

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[1]Craft also argued that entry of the injunction violated his First Amendment rights. Because we conclude that the injunction was improper under the requirements of the applicable statute, we need not address this issue.

[2]Wikipedia defines "caller ID spoofing," which is what Craft tweeted about in this case, as "the practice of causing the telephone network to indicate to the receiver of a call that the originator of the call is a station other than the true originating station. This can lead to a caller ID display showing a phone number different from that of the telephone from which the call was placed." https://en.wikipedia.org/wiki/Caller_ID_spoofing (accessed Mar. 25, 2020). Florida law makes caller ID spoofing a crime under certain circumstances. See § 817.487, Fla. Stat. (2019).

testified that while he does not follow Craft on Twitter, the fact that friends and family notified him of Craft's tweets demonstrated that other people believed the posts to be about Fuller. Fuller also testified that because of his prior arrests for spoofing and the prior antagonism between the parties, he had suffered substantial emotional distress over the tweets, including losing the ability to sleep and eat.

For his part, Craft denied that the tweets were in reference to Fuller. Instead, he testified that he was annoyed by spoofing in general and that he was using this hashtag to track spoofed calls to his phone in a way that would allow him to express his annoyance and disdain for anyone who would make spoof calls. He also testified that he enjoys posting tweets and uses it as a means of entertainment.

After considering this evidence, the trial court concluded that Craft's tweets were "directed at" Fuller and that a reasonable person in Fuller's position, i.e., one who had been arrested several times for spoofing, would suffer substantial emotional distress over the tweets. The court also concluded that Craft's tweets served no purpose other than harassment. Based on these conclusions, the court entered a five-year injunction against Craft, which he now appeals.

The injunction in this case was issued pursuant to section 784.0485(1), Florida Statutes (2018). This court has previously addressed the scope of this statute:

> Section 784.0485(1), Florida Statutes (2014), provides that "[f]or the purposes of injunctions for protection against stalking under this section, the offense of stalking shall include the offense of cyberstalking." Section 784.048(1)(d) defines cyberstalking as "engag[ing] in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose."

> Harassment is "a course of conduct directed at a specific person which causes substantial emotional distress . . . and serves no legitimate purpose." § 784.048(1)(a). Thus, cyberstalking is harassment via electronic communications.

Scott v. Blum, 191 So. 3d 502, 504 (Fla. 2d DCA 2016) (alterations in original) (emphasis added).[3] Hence, to be entitled to the injunction, Fuller was required to prove that Craft's tweets were "directed at a specific person," namely him, that a reasonable person would have suffered substantial emotional distress as a result of the tweets, and that the tweets served no legitimate purpose.

1. Directed at a Specific Person

First, Fuller was required to prove that Craft's tweets, which were posted on Craft's personal Twitter feed and which did not directly reference Fuller, were nevertheless "directed at" Fuller. While the trial court concluded that they were, this ruling is contrary to the law.

This court and others have held that postings on one's own social media page do not constitute actions "directed at a specific person" as a matter of law. For example, in Horowitz v. Horowitz, 160 So. 3d 530, 531 (Fla. 2d DCA 2015), this court held that postings on the defendant's own Facebook page were not "directed at" his ex-wife.

> Mr. Horowitz's Facebook posts do not meet the statutory definition of cyberstalking for two reasons. First, the posts were not "directed at a specific person." § 784.048(1)(d). The testimony showed that Mr. Horowitz posted the information to his own Facebook page. Screenshots of the posts admitted into evidence confirm that they were posted to Mr. Horowitz's page and that Mrs. Horowitz was not

[3]The version of the statute applicable in this case contains substantially the same language.

> "tagged" or mentioned, nor were the posts directed to her in any obvious way.

Id. Similarly, in Logue v. Book, 44 Fla. L. Weekly D2083 (Fla. 4th DCA Aug. 14, 2019), the Fourth District held that tweets and other social media posts, even though they clearly referred to the petitioner, did not constitute conduct "directed at" the petitioner because such tweets and posts are available for all to see and therefore are directed at a broad audience, of which the petitioner is only one. And in David v. Textor, 189 So. 3d 871, 875 (Fla. 4th DCA 2016), the court held that "where comments are made on an electronic medium to be read by others, they cannot be said to be directed to a particular person." See also Chevaldina v. R.K./FL Mgmt., Inc., 133 So. 3d 1086, 1092 (Fla. 3d DCA 2014) ("Angry social media postings are now common. Jilted lovers, jilted tenants, and attention-seeking bloggers spew their anger into fiber-optic cables and cyberspace. But analytically, and legally, these rants are essentially the electronic successors of the pre-blog, solo complainant holding a poster on a public sidewalk in front of an auto dealer that proclaimed, 'DON'T BUY HERE! ONLY LEMONS FROM THESE CROOKS!' "); compare United States v. Cassidy, 814 F. Supp. 2d 574, 577-78 (D. Md. 2011) (comparing Twitter postings to papers tacked to a bulletin board and noting that unlike the case with a telephone call, letter, or email specifically addressed to and directed at another person, "[o]ne does not have to walk over and look at another person's bulletin board").

Here, the evidence at the hearing established that the disputed tweets were posted on Craft's own personal Twitter feed. These tweets did not reference Fuller by name, and Craft did not "tag" or otherwise draw Fuller's attention to the tweets. Instead, the tweets were simply expressions of Craft's annoyance with whomever may

have been spoofing him. As tweets posted on Craft's own Twitter feed, they were not "directed at" any specific person but were instead directed at his entire collection of followers, which notably did not include Fuller. And even if one or more of the tweets may have been an indirect reference to Fuller, such indirect references posted on a private Twitter feed are insufficient as a matter of law to support a conclusion that the tweets were "directed at" Fuller. Therefore, Fuller failed to prove, as a matter of law, that Craft's tweets constituted a course of conduct "directed at" Fuller for purposes of the cyberstalking statute.

2. Substantial Emotional Distress

In addition to showing that the tweets were "directed at" him, Fuller was also required to prove that an objectively reasonable person would have suffered substantial emotional distress as a result of the tweets. While the trial court concluded that Fuller proved this element based on his own personal reaction to the tweets, this conclusion was based on the incorrect legal standard.

In the context of a petition for injunction against cyberstalking, the question of "[w]hether a communication causes substantial emotional distress should be narrowly construed and is governed by the reasonable person standard." Scott, 191 So. 3d at 504 (emphasis added) (quoting David, 189 So. 3d at 875); see also Leach v. Kersey, 162 So. 3d 1104, 1106 (Fla. 2d DCA 2015) ("In determining whether substantial emotional distress occurred, the courts look to the standard of a reasonable person in the petitioner's shoes."). Moreover, "[t]he 'substantial emotional distress' that is necessary to support a stalking injunction is greater than just an ordinary feeling of distress" or simple embarrassment. Venn v. Fowlkes, 257 So. 3d 622, 624 (Fla. 1st

DCA 2018). Hence, the question before the trial court was not whether Fuller subjectively suffered substantial emotional distress; it was whether a reasonable person learning of the tweets in question would have suffered substantial emotional distress.

Case law shows that the bar for establishing that a reasonable person would suffer substantial emotional distress is set fairly high. For example, in Scott, this court held that a reasonable person would not have felt substantial emotional distress as a result of numerous embarrassing emails about him that were sent by Blum to business associates and friends. Scott, 191 So. 3d at 505. In Goudy v. Duquette, 112 So. 3d 716, 717 (Fla. 2d DCA 2013), this court held that a reasonable person would not have suffered substantial emotional distress as a result of an angry telephone call between a dance team coach and a parent, "however one-sided or hostile it might have been." Similarly, in Slack v. Kling, 959 So. 2d 425, 426 (Fla. 2d DCA 2007), this court held that a voice message telling Kling to stay away from Slack's wife or Slack would make an "arrangement," while perhaps mildly threatening, would not have caused a reasonable person substantial emotional distress. Likewise, in Touhey v. Seda, 133 So. 3d 1203, 1204 (Fla. 2d DCA 2014), this court held that a reasonable person would not suffer substantial emotional distress as a result of Touhey visiting Seda's business on one occasion and calling twice or as a result of a single slightly menacing text message.

Here, the record shows that Craft's tweets were neither threatening nor menacing nor hostile nor, frankly, even embarrassing. They did not mention Fuller by name, they did not tag Fuller so as to single him out, and they did not occur in response to some otherwise threatening event that might have changed their character. No objectively reasonable person—not even one with a prior arrest for spoofing—would

have suffered "substantial emotional distress" as a result of these tweets. Therefore, Fuller's evidence was insufficient to prove this element as well.

3. No Legitimate Purpose

Finally, Fuller was also required to prove that Craft's tweets served no legitimate purpose, i.e., that they served no purpose other than to harass Fuller. The trial court concluded that the tweets had no legitimate purpose based solely on its earlier finding that the tweets were "directed at" Fuller. Again, the court did not apply the proper legal standard.

The question of "whether a communication serves a legitimate purpose is broadly construed and will cover a wide variety of conduct." David, 189 So. 3d at 875. "Whether the purpose for [a particular] contact is 'legitimate' is evaluated on a case-by-case basis. . . . However, courts have generally held that contact is legitimate when there is a reason for the contact other than to harass the victim." Venn, 257 So. 3d at 624 (quoting O'Neill v. Goodwin, 195 So. 3d 411, 413 (Fla. 4th DCA 2016)). So, for example, in O'Neill, when the alleged harasser contacted the victim to advise her of an upcoming documentary, the court concluded that there was a legitimate purpose for the contact. See O'Neill, 195 So. 3d at 414; see also Goudy, 112 So. 3d at 717 (holding that when a father was transporting his child to participate in dance team activities, his contacts with the dance team coach had a legitimate purpose); Alter v. Paquette, 98 So. 3d 218, 220 (Fla. 2d DCA 2012) (holding that a series of six text messages served a legitimate purpose other than to harass when they requested repayment of a loan the sender had previously made to the recipient).

In this case, the only evidence on the issue of the purpose of the tweets was Craft's testimony that they were a way for him to log the prank calls he received and that it was entertaining for him to do so in this fashion. The trial court rejected this explanation, finding that it was not credible. And having rejected Craft's testimony, the court then found that his tweets had no legitimate purpose solely based on its earlier ruling that the tweets were "directed at" Fuller. This ruling is in contravention of the law for two reasons.

First, the trial court misapplied the applicable burdens of proof. Regardless of how misguided Craft's tweets may have been, Fuller had the burden to prove that they served no purpose other than to harass Craft. See Leach, 162 So. 3d at 1106 ("To support an injunction against stalking, the petitioner must prove each incident of stalking by competent, substantial evidence.") (emphasis added) (citing Touhey, 133 So. 3d at 1204). Craft did not have the burden to prove that his tweets had a legitimate purpose; Fuller had the burden to prove that they did not. This he failed to do.

Second, the mere fact that tweets or other communications are "directed at" an individual does not establish, as a matter of law, that they have no legitimate purpose. As long as there is a reason for the communications other than harassment, the communications will have a legitimate purpose even if they are directed at someone who does not welcome them. See O'Neill, 195 So. 3d at 414 (communication to advise person of a documentary was a legitimate purpose); Goudy, 112 So. 3d at 717 (communications about dance team activities had a legitimate purpose); Alter, 98 So. 3d at 220 (communications about a loan repayment had a legitimate purpose). The court could not simply rely on its finding that the tweets were "directed at" Fuller to also

conclude that they ipso facto had no legitimate purpose. And the evidence presented here supports no such conclusion.

In sum, Fuller failed to present legally sufficient evidence to establish each of the elements required for him to be entitled to an injunction against cyberstalking, and hence the trial court erred by entering the injunction against Craft. Accordingly, we reverse the final injunction and remand for dismissal of Fuller's petition. We also take this opportunity to remind the parties that injunctions "are not a panacea to be used to cure all social ills. In fact, nowhere in the statutory catalog of improper behavior is there a provision for court-ordered relief against uncivil behavior." Polanco v. Cordeiro, 67 So. 3d 235, 238 (Fla. 2d DCA 2010) (Villanti, J., concurring); see also Power v. Boyle, 60 So. 3d 496, 498 (Fla. 1st DCA 2011) (noting that courts may not "enter injunctions simply 'to keep the peace' between parties who, for whatever reason, are unable to get along and behave civilly towards each other"). The parties agreed in 2018 to go their separate ways and leave each other alone. It would behoove them to honor this agreement.

Reversed and remanded for dismissal of the petition.

SILBERMAN and LUCAS, JJ., Concur.