

NOT DESIGNATED FOR PUBLICATION

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WH

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 2120

CORA PORTER PARSONS

VERSUS

WILLIAM H. PARSONS, SR.

Judgment Rendered: June 11, 2010

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Livingston, Louisiana
Trial Court Number 121,195

Honorable M. Douglas Hughes, Judge

C. Michele McDaniel
Hammond, LA

Attorney for
Plaintiff – Appellee
Cora P. Parsons

A. Wayne Stewart
Livingston, LA

Attorney for
Defendant – Appellant
William H. Parsons, Sr.

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

Hughes, Jr., dissents with reasons.

WELCH, J.

This is an appeal by William H. Parsons, Sr. from a judgment granting Cora P. Parsons a protective order pursuant to the provisions set forth in La. R.S. 46:2131, *et seq.* ("Domestic Abuse Assistance statutes"). For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On September 9, 2008, Cora Parsons filed a petition for protection from abuse pursuant to the Domestic Abuse Assistance statutes, wherein she alleged that her husband, William Parsons, had choked and shoved her, had threatened her life, and had run over her foot with his truck. On the same date, based on this verified petition and pursuant to Cora Parsons' request, the trial court issued an *ex parte* temporary restraining order, prohibiting William Parsons from abusing, harassing, stalking, following, or contacting Cora Parsons and from going within one hundred yards of her residence. Additionally, Cora Parsons was granted use and possession of the residence.

A hearing on the rule to show cause for the protective order was held before a hearing officer¹ on October 17, 2008.² After hearing the testimony of both Cora and William Parsons, along with two other witnesses, the hearing officer recommended that a protective order be granted essentially in the same form and substance as the temporary restraining order previously issued. Additionally, the hearing officer also recommended that Cora Parsons be granted the use of a lawn mower and a generator and that William Parsons be ordered to pay support to Cora Parsons in the amount of \$800.00 per month, to maintain Cora Parsons on health insurance until the parties' divorce

¹ See La. R.S. 46:2135(I).

² The hearing on the rule to show cause for the protective order was originally scheduled for September 26, 2008, but was continued to October 3, 2008, and then again continued to October 17, 2008.

is final, and to pay Cora Parsons' medical bills (that were incurred when William Parsons ran over her foot). On October 22, 2008, William Parsons filed an objection to the hearing officer's recommendation on the basis that the ruling was contrary to the facts and the law. On January 9, 2009, the trial court issued written reasons for judgment affirming the hearing officer's recommendation. A written judgment to this effect was signed on November 5, 2009.³ From this judgment, William Parsons has appealed. On appeal, William Parsons contends that the trial court erred in granting Cora Parsons a protective order.

LAW AND DISCUSSION

Pursuant to the Domestic Abuse Assistance statutes, 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. La. R.S. 46:2135(A), **Rouyea v. Rouyea**, 2000-2613, p. 3 (La. App. 1st Cir. 3/28/01), 808 So.2d 558, 560. If the temporary restraining order is granted without notice, the matter shall be set for a hearing within twenty 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).

"Domestic abuse" is defined in the Domestic Abuse Assistance statutes 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

³ William Parsons filed a motion for new trial, which the trial court denied pursuant to a judgment rendered and signed on July 7, 2009. However, it appears that this motion for new trial was filed and denied before a judgment was even signed by the trial court.

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 v. Rouyea, 2000-2613 at p. 5, 808 So.2d at 561.

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. **Rouyea v. Rouyea**, 2000-2613 at p. 5, 808 So.2d at 561; **Mitchell v. Marshall**, 2002-0015, p. 3 (La. App. 3rd 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, p. 4 (La. App. 5th Cir. 7/6/05), 910 So.2d 443, 445.

In Cora Parsons' petition for protection from abuse, she alleged that William Parsons had choked and shoved her, had threatened her life, and had run over her foot with his truck. At the hearing on the protective order, Cora Parsons testified that on August 24, 2008, William Parsons choked her and told her he was going to kill her. Specifically, Cora Parsons testified that she and William Parsons had a disagreement over a recent purchase he had made and money, which resulted in her pouring water on him. She testified that William Parsons then pushed her down the hallway, up against the washing machine, and said he was going to kill her. She testified that after he let her go, she went to bed, and when she woke up, he was standing over her. Shortly after this incident, William Parsons moved out of the home. According to Cora Parsons, she then left the home a few days later, because she was evacuating with her son (who is a major) to Alabama because of Hurricane Gustav. She testified that she returned to the home on September 2, 2008, after Hurricane Gustav made landfall, and discovered several things

were missing from the home. Although she suspected that William Parsons had removed those items, she was not sure, so she contacted the police, who came to her home to investigate the matter. After the police left the home, William Parsons showed up at the home in his truck with a horse trailer. Cora Parsons explained that she walked up to William Parsons in the truck, she told him that he could not take the horses, and as she went to back away, he “threw [the truck] in gear and he gunned it and cut the wheel towards [her] and he got [her] foot.” She further explained that if she had not been moving away from the truck when he put it in gear, he probably would have run over her. She testified that her daughter-in-law then called 911, and both the paramedics and police came to her home. The paramedics transported Cora Parsons to the hospital, and William Parsons was subsequently arrested and charged with aggravated battery.⁴ Photographs taken of Cora Parsons’ foot after the incident were offered into evidence, and these photographs show her foot was bruised.

William Parsons denied that he had ever pushed, shoved, abused, or touched Cora Parsons in an improper or harmful way or that he had run over her foot with his truck. Two other witnesses, who were at the home during the September 2, 2008 incident and in close proximity to William Parsons’ truck (but on the opposite side of the truck as Cora Parsons), testified that they did not think it was possible that William Parsons had run over Cora Parsons’ foot during this incident, but they both admitted that when she returned to the front porch of the home following the incident, she had limped away from the truck.

After a thorough review of the record and given the conflict in the

⁴ A battery—defined as the intentional use of force or violence upon the person of another—is physical contact, whether injurious or merely offensive. See La. R.S. 14:33; **State v. Dauzat**, 392 So.2d 393, 396 (La. 1980).

testimony of the parties and, thus, the obvious credibility determinations facing the trial court, we find no abuse of the trial court's discretion in concluding that Cora Parsons established by a preponderance of the evidence that William Parsons had committed an act of domestic abuse⁵ warranting the issuance of a protective order against him. Accordingly, we hereby affirm the judgment granting a protective order in favor of Cora Parsons.

CONCLUSION

For all of the above and foregoing reasons, the November 5, 2009 judgment is hereby affirmed. All costs of this appeal are assessed to the defendant/appellant, William H. Parsons, Sr.

AFFIRMED.

⁵ As previously noted, under the Domestic Abuse Assistance statutes, "domestic abuse" is defined to include not only physical or sexual abuse, but also "any offense against the person as defined in the Criminal Code of Louisiana ... committed by one family or household member against another." La. R.S. 46:2132(3). A battery is an "offense against the person" in the Louisiana Criminal Code. See generally La. R.S. 14:29-14:46.1, the part of the Louisiana Criminal Code which set forth the "offenses against the person."

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HUGHES, J.,dissenting.

I must, with respect, dissent. This is a protective order case, not a divorce or a community property partition. The evidence is wholly insufficient to needlessly impose a remedy, best accomplished by other available legal means, when the result is to unreasonably and harshly punish the defendant by depriving him of his constitutional right to bear arms (see 18 USC sec. 922(g)(8)).

There are two instances of domestic discord alleged. In the first instance, the plaintiff admits she was the aggressor, throwing water on the defendant. In the second instance, the defendant was sitting in his truck and the plaintiff again approached him. The defendant at trial called one relative and one non-relative to testify. The plaintiff also had one relative and one non-relative witness known to her, but called neither at trial. Yet the trial court based its ruling on “personal relationship” bias of the witnesses. This is a misapplication of the facts.

The defendant and his witnesses all testified under oath that the plaintiff approached the truck, banging on it and cursing. The defendant also testified that the plaintiff was kicking his truck as well as banging on it.

The plaintiff admits taking xanax and hydrocodone before the incident. Her limping and bruised foot can easily be explained by kicking the truck. The lack of broken bones in her foot after being run over by a large truck pulling a horse trailer cannot.

The issue before us is not the initial temporary restraining order, but a permanent order after a full hearing with both parties able to present evidence. The plaintiff failed to call two eye witnesses which would presumably supported her version of events. I must conclude the order at issue is not supported by the evidence admitted at the hearing.